Judge DODARIDGE,
HIS
Law of *Nobility* and *Peerage*.

WHEREIN THE

ANTIQVITIES,
TITLES, DEGREES,
and *Distinctions*; Concerning the PEERES and NOBILITY of this *Nation*, are Excellently set forth.

WITH

The Knights, Esquires, Gentlemen, and Yeomen; and matters Incident to them, according to the *Lawes* and *Customes* of ENGLAND.

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A Treatise concerning the Nobility, according to the Laws of England.

AS in mans body (for the preservation of the whole) divers Functions and Offices of Members are required; even so in all well-governed Commonwealths a distinction of persons is necessary. And the Policy of this Realm of *England*, for the maintenance and government of the Common-wealth of the same, hath made a three-fold division of persons: That is to say;

First, The King, or Soveraign Monarch; under which names, also a Soveraign Queen is comprized, as declared by the Statute thereof made in the first yeer of Queen *Mary*, *Anno* 5 *Parl.*

Secondly, The Nobility, which do comprehend the Prince, Dukes, Marquesses, Earls, Viscounts, and Barons Spirituall and Temporall.

Thirdly, The Commons, by which generall words are understood Knights, Esquires, Gentlemen, Yeomen, Artificers, and Labourers: But my purpose at this time, being onely to speak of the Nobility, and especially so much of them as I finde written in the Books of the common Law, and Statutes of this Realm; This first I have observed, That our Law calleth none Noble, under the degree of a Baron, and not as men of forraign Countries do use to speak, with whom every man of Gentle Birth is counted Noble; for we dayly see, that both Gentlemen and Knights

do serve in the Parliament, as Members of the Commonalty, *vide Lamberts Justice of Peace, Lib. 4. Cap. 13.* Neither do these words, the Nobles, the high or great men of the Realm, imply the Person and Majesty of the King, *Dier. 155.* But with the Civilians, the King is reckoned among his Nobles, *Doct. Ridley, fol. 93.*

The Nobility are known by the generall name of Peers of the Realm, or the Barony of *England*; for Dukes, Marquesses, and Earls, and all other of the Nobility do sit together in the Kings great Councell in Parliament, as Barons, and in right onely of their Baronies. And therefore by the generall names of Barons of this Realm, and for the Baronage thereof, we do understand the whole Body of the Nobility. The Parliament-Robes of Dukes differing nothing from the Barons, but they wear the Guards upon their shoulders three or four fold; for although Dukes, Marquesses, Earls, and Viscounts in their Creations are attired with Garments of Silk and Velvet, yet in the Parliament they use the same as Barons do, made with Scarlet, with divers differences of white Furre, set with Freinges or Edging on their shoulders: for there they sit by reason of their Baronies, and according to their dignity take their places, *Thomas Mills, fol. 66.*

And hence it was, that those bloody Civill Warres, concerning the liberties granted by the great Charter, both in the time of King *John*, and *H. 3.* his sonne, persecuted by all the Nobility of this Realm (some few excepted) are called in our History, The Barons Warres: Neither have the Spirituall Lords and Peers of the Parliament any other title to that preeminency, but because of their ancient Baronies: For although originally all the possessions of Bishops, Abbots, and Pryors, were given and holden in *Frank-*

almoign,

almayn, yet shortly after the *Norman* Conquest, most of their Tenures were altered, *viz. per Baroniam*, as appeareth by *Matthew Parris*, *Anno* 1070. 66. and of that Tenure have continued ever since, as you may reade by the Consultations of *Claringdon*, in the Raign of *Hen.* 2. and in *Glanvile* and *Bracton*.

But the Tenure of all Abbots and Pryors were extinguished by the uniting and conveying them to the Crown, by the Statute of dissolution of Monasteries, made *Anno* 31 *Hen.* 8. *Cap.* 13. And though the Nobility of *England* in Titles, and by certain Ceremonies may be distinguished, yet a Baron is in equipage, as unto Nobility and priviledges incident to their dignities, with Dukes, Marquesses, Earls, *Cooke* 6. *part* 53. And it is in ordinary experience, That Dukes, and others of any high degree of Nobility, in cases criminall, are tryed by Barons, together with many Earls and Viscounts, as their Peers, and Peers of the Realm.

Nobilitas generally signifieth, and is derived of the word *Nosco*, to know, signifying in common phrase of speech, both with the Latines, and eke with us English-men, a generosity of Blood and Degree, and therefore one said, *vir nobilis idem est quod notus & per omnia, &c.* A Noble-man is he who is known, and the Heroicall vertues of his life, talkt of in every mans mouth. But especially it is applyed and used to expresse the reward of vertue in honorable measure, *& generis claritatem.*

And this is not to be omitted, That the Law doth prohibite any Subject of this Realm to receive Titles of Honor or dignity of the gift or Donation of a Forraigne Prince, or King, or Emperour; for it is a thing greatly touching the Majesty of the King and the State of his Kingdom *Est jus Majestatis & inter insignia summæ potestatis.* It is

the right of Majesty, and amongst the Ensignes of his power, *vide Cook 7. part 25. 6.* And if that man shall bring an action, and in the Writ is stiled by such forraigne title and name of Honour, the defendant may plead, in abatement of his Writ, That he is no Duke, Marquesse, Earl, or Baron; whereupon if the plaintiff or demandant take issue, this issue shall not be tryed by Jury, but by Records of the Parliament, wherein he faileth.

And if an English man be made Earl of the Empire, or of any other forraign Nation created into Honour, and the King also do make him into any Title of Honour in *England*, he shall now be named in all his judiciall proceedings, onely by such name and title as he hath received from the King of this Realm, whose Subject he is: and if by the King of *England* he be not advanced to Title of Honour, then shall he bear the name of his Baptism onely, and Surname, unlesse he be a Knight, *10 Ed. 4. 6. Cook 7. part 16. a.*

A Duke of *Spain*, or of other forraign Nation cometh into *England* by the Kings safe-Conduct, in which also the King doth stile him Duke, according to his Creation; nevertheless in all proceedings in the Kings Courts, he shall not be stiled by his name of dignity, *Cook in the last Book before.*

And though the said Noble person be also by the Kings Letters Patents, and by his forraign name and title of dignity made Denizen, for that is the right name, so called, because his legitimation is given unto him; for if you derive Denizen from *Denizee*, as one born within the Allegiance or Obedience of the King, then such a one should be all one with a naturall born Subject, wherein a Denizen faileth in many things, or if they be naturalized also by the an-

authority of Parliament, whereby he seemeth to be in all things made as a Subject born in *England*, yet he shall not be stiled with his forraign title of dignity, *Cooks 7 part 15. a.*

And so it is if a Noble man of *France*, &c. come into *England* as Ambassadour, and here by lawfull Marriage hath issue a sonne, the father dieth, the son is by birth a naturall English-man, yet he shall not bear the Title of Honour of his father; and the cause and reason hereof is, Because the title of his Nobility had his originall by a French King, and not by any naturall *peration*; which thing is well proved both by authority of Law, and experience in these dayes; for in the book last mentioned, in that leaf is resolved a more stranger case, that is, albeit that a *Postnatus* of *Scotland* or *Ireland*, who is in these dayes a naturall Subject to the King of *England*, or any of his posterity, be he the heir of a Noble man of *Scotland* or of *Ireland*, yet he is none of the Nobility of *England*. But if that Altien or stranger born, or *Scot* be summoned by the Kings Writ, to come unto his Parliament, and is therein stiled by his forraign stile, or by other Title whereunto he is invested within *England* by the Kings grant, then from thenceforth he is a Peer of this Realm, and in all Judiciall and legall proceedings he ought to be so stiled, and by no other name, 39 *Ed.* 3. 36.

And it was the case of *Guilbert Humphreyvile*, Earl of *Angers* in *Scotland*. For it appertaineth to the Royall prerogative of the King to call and to admit any Alien born, to have voyce and place in his Parliament, at his Parliament at his pleasure, although it is put in practice very rarely and seldome time, and that for very great and weighty considerations of State: And if after such Parliamentary Summons of such a stranger born, question do arise,

and the issue, whether he is of that title or no; it may well be tryed by the Records, which is the onely lawfull tryall in that case, *Cook 7. part 15. a 6 part 53.*

But there is a diversity worthy the observation (for the highest and lowest dignities are universall) and therefore a Knight, in all place soever he received his title of dignity, and so ought of right and by Law be named in the Kings Courts, *26 Ed. 4. 6. 39. Ed. 3. 36.*

Also if the Emperour, or the King of *Denmark*, or any other forraigne King come into this Realm by safe-Conduct (as he ought) For a Monarch or an absolute Prince, though he be in League, cannot come into *England* without License and safe-Conduct of the King of *England*; but any subject to such forraigne King in league may come into this Realm without License, *Cook 7. part 21. 6.* in this case he shall sue and be sued by the name of Emperour or King, otherwise the writ shall abate. There is a notable president cited out of *Fleta*, where treating of the Jurisdiction of the Kings Court of *Marshalsey*, it is said, And these things he may lawfully do by Office (that is to say) the Steward of the Kings Houshold, notwithstanding the liberty of any other, although in another Kingdom, where the offender may be found in the Kings house, according to that which happened at *Paris*, held in the 14 yeer of *Ed. 1.* of one *Engleram* of *Nogent*, taken in the Houshold of the King of *England* (the King himself being then in *Paris*) with Silver dishes lately stollen, at which deed the King of *France* being present, and whereupon the Court of the King of *France* did claym cognizance of the plea concerning that theft, by Jurisdiction of the Court of *Paris*, the matter being diversly debated in the Councell of the King of *France*; at length it was ordered that the King of *England* should use and enjoy that his

King-

Kingly prerogative of his Houshold, where being convicted by Sir *Robert Fitz-John* Knight, Steward of the Kings Houshold of the theft, by consideration of the same Court, was hanged on the Gallows in St *Germans* fields, *Cooke* 7. *part* 15. 6.

And there (by the way) may also be noted from the reason in the recited Books alleadged the person of a King in another Kings Dominions is not absolutely priviledged, but that he may be impleaded for debt or trespasse, or condemned for Treason committed within the said Dominions; for it is a generall Law of Nations, That in what place an offence is committed, according to the Law of that place they may be judged, without regard of any priviledge; neither can a King in another Kingdom challenge any such prerogative of immunity from Laws, for a King out of his proper Kingdom hath no *merum Imperium*, absolute power, but onely doth retain *honoris titulos & dignitatis*, the Titles of Honour and Dignity, so that where he hath offended in his own person against the King of the Nation where he is, *per omnia distringitur etiamquoad personam*, he may be distrayned even to his own person. And the same Law is of Ambassadours, *ne occasio daretur delinquendi*, lest occasion of offence be given, like as a sanctuary will save a mans life from man-slaughter, but not when man-slaughter is committed within the Sanctuary, for then he doth wilfully wave the benefit of all priviledges and prerogatives, and nevertheless it bindeth firm, that Ambassadours are called Legats, because they are chosen as fit men out of many, and their persons be sacred both at home and abroad, so that no man injuriously may lay violent hands upon them without breach of the Law of Nations, and much lesse upon the person of a King in a strange Land.

Bracton a Judge of this Realm in the Raign of King *Hen.* 3. in his first Book, 8 saith in effect as followeth:

There is no respect of persons with God, because God is no accepter of persons; for as unto the Lord, he that is greater, is as the lesser, and he that doth govern, as the servant; but with men there is a difference of persons, *viz.* The King, and under him Dukes, Counts, Barons, Vavasors, and Knights; Counts so called, because they take their name from the County, or from the word *Society*, who may also be tearmed *Consull*, of Counselling; For Kings do associate such men unto them to govern the people of God, ordaining them into great honour, power, and name, when they do gird them with swords (that is to say) *ringis gladiorum*, with the Belts of their swords; *ringis*, so called* *quasi renes girans & circundans*, for that they compasse the Reins of such, that they may keep them from incest and luxury, because luxurious and incestuous persons are abominable unto God; upon this cause were the stations and encamping of Arms, called in the ancient language of *Rome castra*, even of the word *Castrare*, to geld, since that they ought to be *castrata vel castra*. In that place ought a good Generall to foresee that *Venus* delights be as it were gelded, and cut off from the Army, *vide* Sir *John Ferne* his Book, intituled, The glory of generosity. The sword also doth signifie the defence of the Kingdome and Countrey.

There be other *Potents* under the King, which are called Barons (that is to say) *robor belli*, the strength of Warre. There be others which are called *Vavasors*, *viri magnæ dignitatis*, men of great dignity; for *Vavasor* cannot better be said to be any thing, than *Vas fortitum ad valetudinem*, a vessel chosen for valour, or as men standing with their Generall *ad valuas Regni*: and this is enough, if not too much in gene-

generall spoken of the Nobility of *England*; now follow I a more particular discourse of them according to their severall degrees.

The Prince.

THe Kings eldest Sonne and Heir apparant is stiled Prince, *Quasi primum locum capiens post Regem*, the first next the King. To him it was permitted by the Statute of 24. *Hen.* 8. *cap.* 13. To wear Silk of the colour of Purple, and Cloth of Gold of Tissue in his apparell, or upon his horse; but by another Statute made in the fourth yeer of King *James*, *Chap.* 25. all Laws and Statutes concerning apparell are taken away; And by the Statute of 34. *Hen.* 3. *cap.* 2. Taking shall not be from henceforth made by others, then by the Purveyors of the King, of the Queen, and of the Prince their eldest Sonne, and that if any other mans Purveyor make such taking, it shall be done of them, as those which do without warrant, and the deed judged as a thing done against the peace, and the Law of the Land, and such as do not in manner aforesaid shall be duly punished.

To eschew maintenance, and nourish peace and amity in all parts of the Realm; many Statutes have been made in the Raign of *Hen.* 4. prohibiting the giving of signes or Liveries to any but to their menialls: Nevertheless, by the Statute of 2. *Hen.* 4. *cap.* 21. It is provided, that the Prince may give his honourable Liveries of signes to the Lords, or to his menial Gentlemen; and that the said Lords

Lords may wear the same, as they wear the Kings Livery, and that the menialls of the Prince may also wear the same, as the Kings menialls.

But afterwards, by occasion of divers other Statutes of latter times made by sundry other Kings, for the suppressing of that enormity of maintenance, and of the generall words in them, that priviledge of the Prince was abridged, or rather taken away, therefore the Statute of 12. *Ed.* 4. was made as followeth.

Item, Our Soveraign Lord the King considering, that the Prince the first begotten Sonne to the King of *England*, hath been at their liberties to give their Liveries, and signes at their pleasure, and that divers Statutes against givers and takers of Liveries and signes, as well in the time of his noble raign, as in the time of his progenitors and predecessors hath been made, and that by force of the said Statutes his dear beloved first begotten sonne *Edward* Prince of *Wales*, Duke of *Cornwall*, and Earl of *Chester*, is as well as any other person restrained to give any such Liveries and signes, as our Soveraign Lord the King; willing that his first begotten sonne the Prince be at his liberty in receiving any person, and giving his signes and Liveries in as large form as any Prince, first begotten sonne of any of his Noble Progenitors and predecessors in time past have been, hath ordained and established by authority of the said Parliament, that the Prince shall be at his liberty to retain and give his honourable Livery and signe at his pleasure, and that the persons so retained, or to whom such Liveries or signes be or shall be given, may be retained and received, and wear the same Livery and sign without trouble, impediment or impeachment, pain, contempt, or forfeiture, or any penalty contained in any of the said Statutes, or in any thing

thing in them compriſed notwithſtanding: Nor that the ſaid Statutes in any manner ſhall extend to any retaining to be made by the ſaid *Prince*, in giving, taking, or retaining of any Livery or tigne of the *Prince*.

By the Statute 21. *Hen.*8. *cap* 13. The *Prince* may retain as many Chaplains as he will, though all others of the Nobility, other then thoſe of the Kings bloud be reſtrained to a certain number, and they, or any of them may purchaſe, licence or diſpenſation, and take, receive, and keep perſonages, or benefices with cure of ſouls.

By order of the common Law, a King might have a reaſonable ayde of all his Tenents, as well of thoſe that did hold of his highneſſe by Knights ſervice, as of thoſe that did hold their Land in ſoccage.

That is to make his eldeſt Sonne Knight, and for the Marriage of his eldeſt Daughter, and the ſumme of money was not in certainty, but at the Kings pleaſure, till by the Statute made in the 25. of *Ed.*3. *cap.* 11. by which is enacted, as followeth.

But firſt note that the ayde is not to be recovered before the Sonne be of the age of 15. yeers, or before the Daughter accompliſh the age of 7. yeers, *Fitz. Herbert Nat. brevium.*

Item, It is aſſented that reaſonable aid to make the Kings firſt Sonne Knight, and to marry his eldeſt Daughter, ſhall be demanded and levied, after the forme of the Statute thereof made, and not in other manner, that is to ſay, of every Knights Fee, holden of the King without mean rate, 20ˢ and no more, and of every 20ˡ of Land, holden of the King without mean in ſoccage 20ˢ, and no more, and ſo *rata pro rata* of the Lands in ſoccage. And for Lands of the tenure of Chevalry, according to the quantity of the Fee.

By another Statute, made in the ſaid 25. yeer of *Ed.*3. *cap.*

*cap.*2. amongst other things it is declared, that to compasse or imagine the death of the Kings eldest Sonne and Heir, is *crimen læsæ Majestatis*, high treason, or if a man do violate the Wife of the Kings eldest Sonne and Heir, it is high treason, and see the Statute 20. *Hen.*8. *cap.*13. And so was the ancient common Law of *England*, and not a new Law made by this Statute, *Cooke* 8. *Part.*28.6. But this Statute is a manifestation and declaration, or publication of the ancient common Law in this Case.

By a Statute made in the said 25. yeer of King *Ed.*3. It is declared, because the people be in ambiguity, and doubt of the children born in the parts beyond the Sea, out of the Kings Legiance of *England*, should be able to demand any inheritance, within the same Legiance or not. Whereof a Petition was put into the Parliament late holden at *Westminster* the 17. yeer of the raign of our Soveraign Lord the King assembled in this Parliament, and was not at the same time wholly assented. Our Soveraign Lord the King willing that all doubts and ambiguities should be put away, and the Law in this case declared, and put in a certainty, hath charged the said Prelates, Earls, Barons, and other wise men of his Councell assembled in this Parliament, to deliberate upon this point, who with one assent hath said, That the Law of the Crown of *England* is, and alwayes hath been such that *Les Enfants du Roy*, the children of the King of *England* in whatsoever part they be born, in *England*, or elsewhere, be able, and ought to bear the inheritance after the death of their Ancestors, which Law our Soveraign Lord the King, the said Prelates, Earls, Barons and other great men, and all the Commons assembled in this Parliament, do approve and affirm for ever.

Note, These words in the Statute, *Les Infants du Roy*, have

have briefly set down, and in a vulgar manner, for *loquendum ut vulgus*, and not in forme of exquisite pleading for *sentiendum ut docti*, and therefore ought to be understood largely, *Cooke 7. part. 11. 6.* and as the Latine word *liberi* is with the Civilians, *Bract. lib. 2. cap. 29.* hath these words, *Item descendit jus vero hæredi ubicunque natus fuerit, vel in utero matris, intra mare, vel ultra: Nec potest sibi aliquis facere hæredem, quia solus Deus hæredem facit.* The right doth descend unto the true Heir, whersoever he shall be born in the Womb of his Mother on this side the Sea, or beyond, no man can make an Heir unto himself, because God only doth make the Heir, read the Statute, and *Cook 7. part. 18. a.* Where you shall see that though generally, the birth-place is observable, yet many times Legiance, and obedience without any place within the Kings Dominions may make a Subject born, for though we see by experience almost in every Parliament, Ambassadors, Merchants, and the Kings souldiers doth shew there in such cause, to have their children naturalized, or made denizens; yet that doth proceed onely of doubt, and needlesse scrupulosity and ignorance of the Law; even as we see men that are doubtfull, desire to be resolved, as may appear by sundry covenants in bargaining, more then necessary. And by renuing of Charter, though there be no forfeitures; and by suing forth particular pardons, when a generall is granted by Parliament, Priests, and Ministers sue to the Parliament, for legitimation of their children.

And in the Articles confirmed by Parliament, touching the marriage between *Philip* Prince of *Spain*, and Queen *Mary*, a speciall proviso was, to barre him from being Tenant by the courtesie of the Crown, in case he should have issue by her, and survive, which was superfluous; because

cause the Common-Law would have denyed this last point. See the Lord *Cromwels* Speech in the case of the *Postnati*, *fol.* 36

But note that if an Alien Enemy come into this Realm, and his Wife English, or stranger, be delivered of a childe within *England*; this childe notwithstanding his birth-place is an Alien born, for want of allegeance in the Parent, *Ibidem.*

King *Henry* did create *Edward* his eldest Sonne the first Prince of *Wales*, and did give unto him the dignity and Dominion of it, to be holden of him and his Heirs, Kings of *England*; and after that time, the eldest sonne of the King of *England* hath been Prince of *Wales*, and as incident to the State and dignity of a Prince, and might make Laws and Statutes, and use jurisdiction and authority, as amply as any King of that Nation could do. *Plowden*, 126. For *Wales* was a Kingdom in ancient time. But in a Statute made in the 12. *Ed.* 1. *Wales* was united and incorporated into *England*, and made parcell of *England* in possession. And note in *Two. Mylls* 112. the devise of the said King was to draw the Welchmen to acknowledge the Kings eldest Son, *Edward* of *Carnarvan* to be their Prince.

Cook 7. *part.* 21. 6. *Vide Mills, fol.* 312.

Also by another Statute made 27. *Hen.* 8. *cap.* 24. a generall resumption of many liberties and franchises heretofore, taken or granted from the Crown, as the authority to pardon Treason, murther, man-slaughter, and fellony, power to make Justices in Oyre, Justices of assize, Justices of peace, Goal delivery, and such like; so that from thenceforth, the Kings eldest Sonne, hath only the name and stile of Prince of *Wales*, but no other Jurisdiction then at the Kings pleasure is permitted him, and granted by his Letters Patents,

as

as by the tenour thereof following, made by King *Henry* the eight, to *Edward* his sonne, and heir apparent may appear.

Henry, By the grace of God King of *England*, and of *France*, Lord of *Ireland*, &c. To all Archbishops, Bishops, Abbots, Priors, Dukes, Earls, Barons, Justices, Viscounts, Governours, Ministers, and to all our Bailiffs, and faithfull Subjects greeting, out of the excellency of Royall preheminence, like as the beams from the Sunne, so doth inferiour honour proceed; neither doth the integrity of Royall lustre, and brightnesse by the naturall disposition of the light-affording light, feel any losse or detriment by such borrowed lights; yea, the Royall Seepter is also much the more extolled, and the Royall Throne exalted, by how much more nobleneſſe, preeminences, and honours, are under the power and command thereof.

Ireland was before, 33. *Hen.* 8. a Lordship, and now is a Kingdom, and the King of *England*, was as absolute a Prince and Soreraign, when he was Lord of *Ireland*, as now when he is stiled King of the same, *Cooks* 7. *part.*

And this worthy consideration allureth, and inducеth us with desire to the increase of the name and honour of our first begotten, and best beloved Sonne *Edward*, in whom we behold and see our selves to be honoured, and our Royall House also, and our people subject to us, hoping by the grace of God (by conjecture taken, of his gratious future proceedings) to be the more honourably strengthned, that we may with honour prevent, and with aboundant grace prosecute him, who in reputation of us, is deemed the same person with us.

Wherefore

Wherefore by the Councell and consent of the Prelats, Dukes, Earls, Viscounts, and Barons of our Kingdom, being in our present Parliament, we have made and created, and by these presents, make and create him the said *Edward* Prince of *Wales*, and Earl of *Chester*, and to the same *Edward* we give and grant, and by this Charter have confirmed the Name, Stile, Title, State, Dignity, and the honour of the said Principality, that he may therein in governing, rule, and in ruling, direct, and defend. We by a Garland upon his head, by a Ring of Gold upon his Finger, and a Virge of Gold, have according to the manner invested him to have, and to hold to him, and to his Heirs the Kings of *England* for ever.

Wherefore we will and straightly command, for us, and our Heirs, that *Edward* our Sonne aforesaid, shall have the Name, Stile, Title, State, Dignity, and honour of the Principality of *Wales*, and of the County of *Chester* aforesaid, unto him and his Heirs, the Kings of *England* aforesaid for ever; These being witnesses, the Reverend Father *John* Cardinall and Archbishop of *Canterbury*, Primate of all *England*, our Chancellor, and *William*, Archbishop of *York*, Primate of *England*, *Thomas* Bishop of *London*, *John* Bishop of *Lincolne*, and *William* Bishop of *Norwich*; our most welbeloved Cousins, *Richard* Duke of *York*, *Humphry* Duke of *Buckingham*; our welbeloved Cousin, *Richard* Earl of *Warwick*, *Richard* Earl of *Salisbury*, *John* Earl of *Wiltshire*; and our welbeloved, and faithfull Cousin, *Ralph Cromwell*, Chamberlain of our House, *William Falconbridge*, and *John Sturton*, Knights; Dated at Our Palace at *Westminster* the fifteenth day of *March*, and in the yeer of Our Raign thirty two.

And here (by the way) may be observed, that in ancient time,

time, and in the time of the Engliſh Saxon Kings, the uſe was as well in penning the Acts of Parliament, as of the Kings Letters Patents, when any lands, franchiſes or hereditaments, did paſſe from the King of any eſtate of inheritance, as alſo in their creations of any Man unto honour and dignity, the concluſion was with the ſigne of the Croſſe in forme aforeſaid (that is) *his Teſtibus &c.*

But long time that forme hath been diſcontinued, ſo that at this day, and for many yeares paſt, all the Kings Patents for lands, franchizes and hereditaments, doe conclude with *teſte me ipſo*; neverthleſſe in all creations of honour and dignity by Letters Patents, the ancient forme of concluding with, *his teſtibus*, is uſed at this day, *Cookes* 8. part 19.

And it hath been reſolved by the Judges, that all Acts of Parliament and Statutes which doe concerne the Prince, who is the firſt begotten ſon of the King, and heire apparant to the Crowne, for the time being, *Perpetuis futuris temporibus*, in all ſucceſſion of ages and times be ſuch Acts, whereof the Judges and all the Realme muſt take connſance, as of generall Statutes, for every ſubject hath intereſt in the King, and none of his ſubjects (who is within his Lawes) be divided from him, being his head and Soveraign; ſo that the buſineſſe and things of the King doth touch all the Realme, and namely, when it doth concerne the Prince, the firſt begotten ſonne of the King, and Heire apparant to the Crowne, *Corruſcat enim Princeps radiis Regis Patris ſui & cenſetur una perſona cum ipſo*; For the Prince ſhineth with the beames of the King his Father, and is holden to be one perſon with him. *Cookes* 8. part 28.

Although the Prince by expresse words hath no priviledge by the great Charter of the Forrest, *9 H.3.cap.11.* for hunting in the Kings Forrests or Parks, passing by them, and sent for by the Kings commandment; yet by construction the Prince is to take benefit and advantage thereby, as well as Bishops, Earls, or Barons, who are expressed, *Crompt. Courts, des Justices de Forrests,167.*

In the Parliament, *31 H.8.c.10.* an Act concerning the placing of the Kings children, and Lords in the Parliament, and other assemblies, were amongst other things made as followeth.

First, it is enacted by the authority aforesaid, that no person or persons, of what degree, estate or condition, whatsoever he or they be, (except only the Kings children) shall at any time hereafter attempt or presume to sit, or have place at any side of the cloth of state in the Parliament chamber, neither of the one hand of the Kings Highnesse, or of the other, whether the Kings Majesty be there personally present or not.

The Prince shall not find pledges for the prosecution of any Action, and therefore shall be amerced more then the King should be, or the Queen his wife, *Vide Cooks 8. part, 61. b.*

Of the most noble and excellent Prince that now is, it is truly said, that he is *omni nomine numine magnus*, by destiny, name, & providence of God, the greatest; before *Cook* to the Reader, before his 8. Book, the last leaf.

Nevertheless as he is a distinct person by nature from the King, so is he distinct by the Law, *viz.* a Subject, and holdeth his principalities and seigniories of the King; neither shall he have all those Prerogatives which the King shal have; for example, when the King seizeth his Subjects lands, or taketh away his goods from him, having

ving no title by order of the Law so to do: In this case the Subject is to sue to his Soveraign Lord by way of Petition onely, for other remedy hath he not, but suit by Petition can be to none other then to the King; for no such suit shall be made to the Prince, but Actions as the case requireth, as against a Subject, *Stamf. prarog. ca.* 22.

And in token of subjection, the Prince doth not upon his Posie of his Arms disdain the old Saxon word (*Ich dien*, I serve) as *Lambert* doth mention in his Book of Perambulation of Rent. 364.

And there is a case, that *Gascoin* chief Justice of *Engl:* in the time of *H.*4. did commit the Prince, who would have taken a prisoner from the Bar in the Kings Bench, and the Prince did humbly obey, and did go at his command; in which the King did greatly rejoyce that hee had such a Judge who durst minister justice upon his son, and also that hee had a son so gracious as to obey, *Court de Banco Regis*, 79. *Crompton.*

A question was moved to the Justices in the first yeer of *H.*7. what order should be in that present parliament, for the anulling and making void certain attainders, for so much as divers who were returned of that Parliament did stand attainted of treason; and all the Justices resolved, That so many of the Knights of the shires, or Citizens, or Burgesses as stood then attainted of treason, should depart out of the Parliament house at the reversall of the Act of Parliament for their attainders. But as soon as the Act of Parliament was reversed and annuld, that they and every of them (that is to say) Lords and Commons should come into their places, and then may proceed upon any thing there moved lawfully, as lawfull persons; for it is not convenient that they who are attainted should be in places of lawfull Judges.

And then another question was moved, What shall be said of the King himself? for he also was attainted by his Predecessour *Rich.* 3. and after communication had amongst themselves, all did agree that the King was a person able, and discharged of any former attainder *ipso facto*. That he took upon him to raign, and to be King, by which it manifestly appeareth, that by the Laws of *England* there can be no *inter regnum* within the same, & that presently by descent, the next heir in blood is cõpleatly and absolutely King, without any essentiall Ceremony, or act to be done *ex post facto*. And that Coronation is but a royall ornament, and outward solemnization of the descent, and of this last matter. Read *Cook 7 part, fol.* 10.6. and that there followeth.

Of Dukes.

THe form of the Patent of Duke of *York* that now is.

Rex, &c. To all Archbishops, Bishops, Dukes, Marquesses, Earls, Viscounts, Barons, Justices, Governours, Knights, Ministers, And to all Bailiffs, and fairhfull Subjects, greeting: Whereas We often times call to minde how many and innumerable gifts, and what excellent benefits that great worker of all goodnesse of his only benignity and clemencie, hath abundantly bestowed upon Us, who by his power hath consociated divers and mighty Lyons in firm peace without any strife, but also hath amplified and exalted the bounds and limits of our Goverument,

vernment, by his unspeakable providence above our progenitors, with an indissolvible conjunction of the ancient and famous Kingdoms in the right of blood under our Imperiall Diadem; in regard whereof, we cannot but most willingly acknowledge our fruitfulnesse and issue, plentifully adorned with the gift of Nature, which he hath vouchsafed upon us, because in truth, in the succession of children, a mortall man is made as it were immortall. Neither unto any mortall men, at leastwise unto Princes not acknowledging superiours, can any thing happen in worldly cases more pleasant and acceptable, then that their children should become notable in all vertues, goodnesse, manners, and increase of dignity; so as they which excell others in nobleness of bloud, and indowments of Nature, might not be thought of others to be exceeded.

Hence it is, that that great goodnesse of God, which is shewed unto us in our fertility, to passe in silence, or to be thought not to satisfie the Law of Nature, whereby we are chiefly provoked to be well affected, and liberall to those, in whom we behold our blood to begin to florish, coveting with great and fatherly affection, that the perpetuall memory of our blood, with honours, and increase of dignity, and all praise may be affected: Our well-beloved Son, *Charls* Duke of *Albany*, Marquesse of *Ormond*, Conat of *Rosse*, and Lord of *Ardmannoth*; Our second begotten son, in whom the Royall form and beauty worthy honour, and other gifts of vertue, do now in the best hopes shine in his tender graces: We erect, create, make and ordain, and to him the name, stile, state, title, dignity, authority, and honour of the Duke of *York* do give, and him of that Name, with the title, state,

ſtile, honour, authority, and dignity, with other honors to the ſame belonging and annexed, by the girding of the ſword, cap, circlet of gold put upon his head, and the delivery of a golden Virge, we do really inveſt; to have and to hold the ſame name, and ſtile, ſtate, and dignity, authority, and honour of the Duke of *York* unto the aforeſaid *Charles* our ſecond begotten ſon, and to his heirs males of his body, lawfully begotten for ever. And that the aforeſaid *Charles* our ſecond begotten ſon, according to the decencie and ſtate of the ſaid name of Duke of *York*, may more honorably carry himſelf; we have given and granted, and by this our preſent Charter we confirm for us and our heirs, unto the aforeſaid Duke, forty pounds to have, and yeerly to receive to the foreſaid Duke and his heirs for ever out of the Farms, iſſues, profits, and other commodities whatſoever comming out of the foreſaid County of *York*, by the hands of the Sheriffe of the ſame County for the time being, at the Terms of *Eaſter*, and *Michael* the Arch-angel, by even portions; for that expreſſe mention of other gifts and grants by us unto the ſame Duke, before time made in theſe preſents made, doth not appear notwithſtanding.

Theſe be witneſſes, the moſt excellent, and moſt beloved *Henry*, Prince, our firſt begotten ſon, *Ulrick* Duke of *Holſt*, brother of the queen our beloved wife, and the Reverend Father in Chriſt, *Richard* Archbiſhop of *Canterbury*, Primate and Metropolitan of all *England*; and alſo our welbeloved and faithfull Councellour, the Lord *Eleſmore*, and Chancellour of *England*, *Thomas* Earl of *Suffolk*, Chamberlain of our houſhold; and alſo our dear couſin, *Thomas* Earl of *Arundel*, and our welbeloved couſin and Councellour, *Henry* Earl of *Northumberland*,

thumberland, *Edward* Earl of *Worcester*, Master of our horse, *George* Earl of *Cumberland*; and also our well-beloved cousins, *Henry* Earl of *Southampton*, *William* Earl of *Pembroke*; and also our well-beloved cousins, *Charles* Earl of *Devon*, Master of our Ordinance, *Henry* Earl of *Northampton*, Warden of the Cinque-Ports, *John* Earl of *Marr*, *Robert* Viscount *Cranborne*, our principall Secretary; and our well-beloved and faithfull Councellour *Edward* Lord *Zuch*, President of our Councell in the Principality and Marches of *Wales*; and also our well-beloved and trusty *Robert* Lord *Willoughby* of *Earsby*, *William* Lord *Mounteagle*, *Gray* Lord *Chandois*, *William* Lord *Compton*, *Francis* Lord *Norris*, *Robert* Lord *Sidney*; our well-beloved and faithfull Councellours, *William* Lord *Knowles*, Treasurer of our houshold, *Edward* Lord *Wotton*, Comptroller of our houshold; and our well-beloved and faithfull Councellour, *Alexander Lord*; and also our well-beloved and faithfull Councellors, *George Dunbarr*, Lord of *Barwick*, Chancellour of our Exchequer, *Edward* Lord *Bruse* of *Kinloss*, Master of the Rolls of our Chancery; and also our faithfull and well-beloved *Thomas* Lord *Erskine* of *Bielton*, Lord *Balmerinoth*, and others; given by our hand at our Pallace of *Westminster* the sixth day of *January*, in the second yeer of the Raign of K. *James*.

K. *Edw.* 3. in the 11 year of his Raign, by his Charter in Parliament, and by authority of Parliament did create *Edw.* his eldest son, the Black-Prince Duke of *Cornwall* not onely in title, but *cum feodo*, with the Dutchy of *Cornwall*, as by the tenour of the said Letters Patents exemplified may appear, *Cooke* 8 *part*, in the pleading, *Habend' et tenend' eidem duci, et ipsius et hered' suorum Regum Angliæ filiis primogenitis, et dicti loci ducibus in*

Regno Angliæ hereditatoria successioni: To have and to hold to the same Duke and his heirs Kings of *England*, the first begotten sons, and Dukes of the same place, in the kingdom of *England*, and to hereditary succession; so that he that is hereditable must be heir apparant of the King of *England*, and of such a King, who is heir unto the said Prince *Edward:* And such a first begotten son and heir apparant to the Crown, shall inherit the said Dukedom in the life of the said King his father, with manner of limitation of estate, was short, excellent, and curious, varying from the ordinary Rules of the Common Law, touching the framing of any estate of inheritance in fee-simple or fee-tail. And nevertheless by the authority of Parliament, a speciall fee-simple is in that onely case made, as by judgment may appear in the Book aforesaid, and the case thereof, *fol.*27. and 21 E.3.41.*b.*

And ever since that creation, the said Dukedom of *Cornwall* hath been the peculiar inheritance of the Kings eldest son, *ad supportandum nomen & onus honoris*, to support the name and weight of that his honourable estate, during the king his fathers life; so that he is ever *Ducatus non creatus*, a Duke born, not created; and the said Duke the very first day of his nativity is presumed and taken to be of full and perfect age, so that he may sue that day for his livery of the said Dukedom, and ought of right to obtain the same, as well as if he had been full 21 yeers of age.

And the said Black-Prince was the first Duke in *England* after the Conquest; for though *Bracton*, who made his Book in *H.*3. saith, *Et sunt sub rege duces*, as before appeareth, yet that place is to be understood of the ancient kings, who were before the conquest; for in *Mag. Charta*, which

which was made in *Anno* 9 *H.*3. we finde not the name of Duke amongst the Peers and Nobles there mentioned. For, seeing the Norman Kings themselves were Dukes of *Normandy*, for a great while, they adorned none with this honour of Duke.

And the eldest son of every King, after this creation, was Duke of *Cornwall*, and so allowed; As for example, *Henry* of *Monmouth*, eldest son of *H.* 4. and *Henry* of *Winsor*, eldest son of *H.*5. and *Edw.* of *Westminster*, the first son of *Ed.* 4. and *Arthur* of *Winchester* first son of *H.* 7. and *Edward* of *Hampton* first son of *H.* 8. but *Richard* of *Burdeaux*, who was the first son of the Black-Prince was not Duke of *Cornwall*, by force of the said creation; for albeit, after the death of his father he was heir apparant to the Crown, yet because he was not the first begotten son of a King of *England* (for his father dyed in the life time of king *Ed.*3.) the said *Richard* was not within the limitation of the grant and creation, by authority of Parliament, made in the 11 yeer of king *Edward* above mentioned. And therefore, to supply that defect, in the 5. yeer of *Ed.* 3. he was created Duke of *Cornwall* by a speciall Charter.

Elizabeth eldest daughter to king *Edw.* 4. was not Dutches of *Cornwal*, for she was the first begotten daughter of king *Edw.* 4. but the limitation is to the first begotten son.

Henry the 8. was not in the life of his father, king *H.*7. after the death of his eldest Brother *Arthur* Duke of *Cornwall*, by force of the said creation; for albeit, he was sole heir apparant to the king, yet he was not his eldest begotten son, *Cooke* 8 *part.* 29.*b.* and 30.*a.*

And the opinion of *Stamford* a learned Judge, hath been,

been, that he shall have within his Dukedom of *Cornwall* the kings Prerogatives, because it is not severed from the Crown, after the form as it is given; for, none shall be inheritour thereof, but the kings of the Realm: For example, whereas by the Common Law, if a man hold divers Mannors, or other lands and tenements of severall Lords, all by knights service, some part by priority and ancient Feoffment, and other lands by posterity, and by a latter Feoffment, and the Tenant so seized dyeth his son and heir within age: In this case the custody of Wardship of the body, and his marriage, may not be divided among all the Lords, but one of them onely shall have right unto it, because the body of a man is intire; and the Law doth say, That the Lord of whom some part of those lands be holden by priority; and by the same tenure of Chivalry shall have it, except the king be any of the Lords; for then, though the Tenant did purchase that land last, yet after his death the king shall bee preferred before all, or any other the Lords, of whom the Tenant did hold by priority: And so shall the Duke of *Cornwall* in the same case have the same Prerogative, if his Tenant dye holding of him, but by posterity of Feoffment, for any tenure of his Dutchie of *Cornwall*, although the said Duke is not seized of any particular estate, whereof the reversion remaineth in the king: for the Prince is seized in fee of his Dukedom, as before is said.

John of *Gaunt* the fourth son of king *Edward* 3. did take to wife *Blanch*, who was daughter and heir to *Henry* Duke of *Lancaster*, who had issue, *Henry* afterwards king of *England*, so that the said Dutchy of *Lancaster* did come unto the said *Henry* by discent from the part of his

his mother, and being a subject he was to observe the Common Law of the Land in all things concerning his Dutchie. For if he would depart in Fee with any part thereof, hee must make livery and seizen, or if hee had made a Lease for life, reserving rent with a reentery for default of payment, and the rent happen to be behind, the Duke might not enter unlesse hee doe make a demand, or if he had alienes any part thereof whilest he was with age hee might defeat the purchaser for that cause, and if hee would grant a reversion of any estate for life or yeares in being, there must also be Attornment, or else the grant doth not take effect.

But after that hee had deposed King *Richard* the second, and had assumed upon him the Royall estate, and so had conjoyned his naturall bodie in the bodie Politique of the King of this Realme, and so was become King: Then the possessions of the Dutchie of *Lancaster* were in him as King, and not as Duke. For the name of Duke being not so great, as the name of a King, was drowned by the name of King; and by the State Royall in him who was Duke, for the King cannot bee a Duke within his owne Realme: but out of his Realme hee may.

And likewise the name of the Duchie, and all the Franchizes, Liberties, and Jurisdictions of the same, when they were in the hands of him who had the Crowne and Jurisdiction Royall, were gone by the Common Law, and extinct, for the greater doth distinguish the lesse, and after those times the possessions of the Dutchie of LANCASTER would

would not passe from King *Henry* the fourth, but by his Letters Patents under the great Seal of *England*, without livery of seisin, and without Attornment; and if he make a Lease for life being Duke, reserving a rent with reentry, for default of payment, and after his assumption of the Crown the rent happen to be unpaid, he might reenter without demand; for the King is not bound to do such personall Ceremonies as the Subjects are by the Law compelled to do. Therfore to have the said Dutchy to be still a Dutchy, with the liberties to the same, as it was before; and to alter the order & degree of the lands of the Dutchy from the Crown, the said King *H.* 4. made a Charter by authority of Parliament, which is intituled *Charta Regis Henrici quarti de seperatione ducatus Lancastriæ a corona authoritate Parliamenti anno Regni sui primo.* The Charter of *Henry* the fourth, for the separation of the Dutchy of *Lancaster* from the Crowne by the authority of Parliament, in the first yeer of his raign of the said King, as by the tenure thereof may appear.

And so by authority of Parliament, the said Dutchy, withall the Franchises and liberties, were disjoyned from the Crown, and from the Ministers and Officers of the Crown, and from the receit of the revenues of the Crown, and from the order to passe by such conveyance which the said Law did require in the possessions of the Crown.

But although the possessions of the Dutchy by force of the said Statute stood, divided from the Crown, and ought to be demeaned and ordered, and passe as they ought before *Henry* the fourth was King; yet there is no clause set down in the said Charter, which

which doth make the person of the king, who hath the Dutchy in any other degree then it was before; but things concerning his person, shall in the same estate as they were before seperations: Insomuch, as if the Law before the Charter, by the authority of Parliament adjudged the person of the King alwayes of full age, having regard unto his gifts, as well of the lands which he doth inherit in his naturall body, as in that he doth inherit in the right of his Crown, or politique body, it shall be so adjudged for the Dutchy land after the said Statute; for the Statute doth go, and reach unto the estate, condition, and order of the lands of the Dutchy, but doth not extend to the person of the king, who hath the lands in points touching his person, neither doth it diminish or alter the preheminences which the Law doth give, or attribute to the person of the King. For if king *Henry* 4. after the said Act, had made a Lease, or other grant of parcell of the Dutchy by the name of *H.* Duke of *Lancaster* onely, it had been void; for it should have been made in the name of *Henry* 4. king of *England*.

And thus stood the Dutchy of *Lancaster*, severed from the Crown all the raign of *H.* 4. *H.* 5. and *H.* 6. being politiquely made for the upholding of the Dutchy of *Lancaster*, their true and ancient inheritance, howsoever the right heir unto the Crown might in future time obtain his right thereunto (as it happened in king *Edward* 4. his time:) But after king *Edward* 4. obtained his right unto the Crown of *England*, and was in his remitter, he in Parliament attainted *H.* 6. and appropriated unity, and annexed the said Dutchy again unto the Crown of *England*, as by the Statute thereof made in the

the first yeer of his Raign may appear.

By which Statute three things were ordained:

1. First, the County Palatine of *Lancaster* was agai[n] established.

2. Secondly, he did vest it in the body politique o[f] the kings of this Realm.

3. Thirdly, he did divide it from the order of th[e] Crown-lands; and in this force it did continue untill th[e] time of *H.7.* who forthwith (being descended from th[e] house of *Lancaster*) did separate it onely in order an[d] government from the Crown, and so continueth at thi[s] day, and all that is before spoken concerning the Duk[e] and the Dukedom of *Lancaster*, appeareth in *Plowden*, 212. and that which there followeth.

Before I write further concerning the Nobility, I should set down the form of the Kings Letters Patents of their Creations, and the manner of solemnity used in the admittance and investry of Marquesses, Earls, Viscounts, and Barons, according to their severall degrees. But I do willingly omit so to do, partly because in effect the same may appear by that before recited Patent, for the Creation of a Duke (altering onely such things which of right ought to be altered) and partly because their Patents are not onely extant and of Record, but also because all those things are to be read in a printed English Book of this subject, judicially made by *Tho. Mills*, being a matter also proper to the Colledge and Corporation of Heralds, and not unto the drift of my discourse, and I will briefly set down some other things observable concerning each of them.

Of

Of Marquesses.

A Marquesse, that is, if we consider the very nature of the word, is a Governour of the Marches, and hath the next place of honour after a Duke.

This title came to us but of late dayes, and was not bestowed upon any one before the time of King *Rich.* 2. who made *Robert Vere* Marquesse of *Dublin*, and then it became with us to be a title of honour; for before time those that governed the Marches were called commonly Lords Marchers, and not Marquesses.

After the Normans had conquered this land, it was carefully observed by them as a matter of much moment, and a point of speciall policie, to place upon the confines and borders of the Britains, or Welsh, &c. not then subdued, men of much valour, not onely sufficiently able to incounter the inrodes and invasions of the enemy; but also willing to make on-set of them, and inlarge the Conquest; these men thus placed, were of high bloud, credit, and countenance, among their country-men the Normans, and in whose faith and power the Conqueror reposed speciall confidence and trust, and therefore in their territories given unto them to hold their tenures, were devised to be very speciall, and of great importance, and their honours inriched with the name and priviledges of Earls of *Chester*, and for the North border of *Wales* created to be a County Palatine, and the Barons of the middle Port of the South Marches, were adorned in a manner with a Palatine Jurisdiction, having a Court of Chancery, and Writs only among themselvs pleadable, to th'intent that their

their attendance, might not thence be driven for the prosecution of controversies, and quarrells in the Law: and as for the other part of the South Marches, they seemed sufficiently fenced with the River of *Severn* and the Sea.

Of Earls.

FIrst, It is to be observed, that originally within this Kingdome, Earldomes of Counties in the ancient English Saxon Government, were not onely Dignities of Honour, but also Offices of justice, for that they did further the administration of justice in the Counties whereof they were Earls or Aldermen. They had likewise their Deputies under them, the Sheriff an Officer yet in being, and retayning the name of his Substitution, in Latine therefore called *Vicecomes*, as it is to be read at large in *Cambden*.

The Earls, in recompence of their travell concerning the Officers of the County received a Sallary, namely, the third peny of the profits of the said County; which custome continued a long time after the Conquest, and was inserted as a Princely benevolence or gift in their Patents of Creation (as by divers ancient Patents thereof may appear) which afterwards were turned into pensions, for the better maintenance of that honour, as appeareth by a Book Case upon the pleading of a Pattent, whereby King *Henry* the sixth Created that worthy Knight, Sir *John Talbott* Earl of *Shrewsbury*; which

which pension is so annexed to their dignity, as that by any means of Alienation, it cannot be at any time severed and disjoyned from the same; and therefore in respect of such pensions, which were the third part of the profits of the County, or such other sum given in lieu thereof, some men have, not without probability thereof imagined, *quod Comites nominabantur quia in multis fiscu Regii Socii et Comites item participes essent, vide Cooks 7 part 34. a.*

Of the single Earls, and not Palatine within the Realm of *England*, there were and have been principally two kindes, but every of them subdivided into severall branches, for they either take name of a place, or hold their title without any place at all. Those that take their name of a place are of two kindes; for either the same place is a County (and this is most usuall) as the Earl of *Devon*-Shire, *Cornwall*, *Kent*, &c. or else of some other place being no County as a Town, Castle, Honour, or such like; of which latter sort, some are most ancient, having their originall even from the Conquerer, or shortly after, as the Earldome of *Richmond* in *York*-Shire, *Clarence* in *Suffolk*, *Arundel* in *Sussex*; all which had their originall in the time of the Conquerer, by Donation of those Castles and Honors the Earldome of *Bath*, in the time of *H.* 7. and after in the time of *H.* 8. erected in the Family where it now remayneth: and the Earldome of *Bridgewater*, whereof *Giles Dawbery* was created in the time of *H.* 7.

Earldomes, which have their titles without any place, are likewise of two kindes, either in respect of office, as is the Earl Marshall of *England*; for it is granted in this or the like manner, *Officium Mareschalli Angliæ*, with

further words, *viz. A. B. &c. Comitem Mareschallum Angliæ creamus ordinamus & constituimus, &c.* By which it appeareth that the very Office is an Earldom, which title of Earl Marshall of *England*, King *Richard* 2. gave first to *Thomas Newbray*, Earl of *Nottingham*, whereas before they were simply stiled Marshalls of *England*, *Cambden*. 167.

The second sort of Earls by birth, and so are all the Sonnes of the Kings of *England*, if they have no other dignity bestowed upon them: and therefore it was said that *John* afterwards King of *England*, in the life of his Father, *Hen.* 2. was called *comitissæ terræ*, before he was affied to *Alice* the daughter of the Earl of *Moreta* in *France*, though *Hollenshed*, *fol.* 103. writing of the degrees of people in *England*, saith, That the Kings younger Sonnes are but Gentlemen by birth, till they have received creation from the King of high estate.

Earls, and all others of the degree of Nobility, and honour, have Offices of great trust and confidence, being for two principall purposes, *ad consulendum Regi tempore Pacis*, to Councell the King in time of peace, the other, *ad defendendum Regem & Patriam tempore belli*, to defend the King and Country in time of Warre; and therefore Antiquity hath given unto them two Ensignes to resemble both the said duties; For the first, the head is adorned with a Cap of honour, and a Coronet, and the body with a Robe in resemblance of Councell. Secondly, They are girt with a sword, in resemblance, that they must be faithfull and true to defend the Prince and Country, *Cooke* 7. *part.* 34. *a.*

But to come to the Kings high Councell of Parliament, No man ought to presume before he hath received the

the Kings-Writ of Summons, for the rule is *ad consilium non accedas antequam voceris*, the forme of a writ of Summons to an Earl is as followeth.

Rex, &c. Unto his welbeloved Cosin *Edward*, Earl of *Oxford* greeting. Because by the assent and advise of our Councell, for certain weighty and urgent businesse, concerning us the State and defence of our Kingdom, and Church of *England*; we have ordained to be holden a certain Parliament at our Citie of *Westminster*, the 22. day of *November* next coming, and there together with you, and with the Prelates, the great and noble men of our said Kingdom, to have conference and treaty; commanding, and firmely enjoyning you, upon your faith and alleageance, whereby you are holden unto us, that the dangers and perills imminent of that businesse considered, and all excuse set apart, you be present the said day in the same place with us, and with the Prelates, and great and noble men aforesaid, to treat and give Councell upon the aforesaid businesse; and hereof fail you not, as you tender us, our honour, and the safeguard, and defence of our Kingdom and Church aforesaid. Witnesse our self at *Westminster* in the second day of *March*, in the first year of our Raign. *Cromptons* Courts, *tit. Parliam.* 1. which is recited out of the Book of *Entries*. 594.

Upon this Writ, three things have been observed.

First, A priviledge incident to an Earl, or other of degree above him; for the Kings doth salute him by the name of his Cosin, although he peradventure be of no consanguinity to the King.

Secondly, When the King doth summon an Earl, or any other Peer of the Realm of the Parliament, he doth

send his Writ, directed to himself particularly, and not to the Sheriff of the County, as the generall Summons are for Knights and Burgesses for the Parliament.

Thirdly, The Writ is to the Earl of *Oxford* greeting, not naming him Knight, though he be a Knight, and though that degree be parcell of his name, as appeareth 3. *Hen. 6. fol.* 29.

And *Prisot* chief Justice in the 32. *H.* 6. 29. That if an Esquire be made Knight, he looseth the name of Esquire: But if a Knight be made a Nobleman, he doth still retain the name of Knight, and so ought to be stiled in all Writs. And *Cooke* 4. *part. fol.* 118. *a.* saith, That if a Baron be created an Earl, yet his title of Baron doth continue. But in *Plowdens* Book. 213. It is agreed, That if the Crown of *England* do descend to a Duke, within *England*, his name of Duke is gone for *omne majus tollit minus.*

The increase of Name by the Addition of Honour.

AFter a Man is created an Earl, Viscount, or into any other title of honour above them, his title is become parcell of his name (and not an addition only) and in all legall proceedings, he ought to be stiled by that his dignity.

In the first yeer of King *Edward* 3. *fol.* 151. a Writ of *Formedon*, was brought against *Richard* son to *Alin*, late Earl of *Arundel*, and did demand the Mannor of C. with

with the Appurtenants, &c. The Tenant by his learned Councell, did plead, that he is Earl of *Arundel*, and was Earl the ſame day of the Writ purchaſed, and demanded Judgement of the Writ, becauſe he was not named in the ſame according to his dignity, and title of Honour, to which the Demandant, ſaith, That at day, and time, when he did purchaſe the Writ, the Tenant was not known, nor taken to be an Earl, and it is hard Juſtice, if the Writ ſhould abate without any default in the Plantiffe. Nevertheleſſe, Becauſe the truth of the matter, ſo that the Earldom did deſcend unto him, before the Plaintiff commenced his Action, and purchaſed his Writ againſt him; therefore by judgement, his Writ was abated, although the Tenant was not at that time known, or holden to be an Earl. But if a Baron be Plantiff or Defendant, &c. It is not of neceſſity to name Baron, 8. *H.*6. 10. Yet ſee a diſtinction of Barons concerning this matter heer following, *Fol.*27. *b.*

And ſo *Reynald Gray* was reputed an Eſquire, after the Earldom diſcended to him, till at the laſt, it was publiſhed, and declared by the Queen, and by the Heralds, that he was Earl of *Kent* in right, and by diſcent, although he was reputed, or named Earl before that time, *Dyer* 318. *lib.*10.

Addition of Name.

BUt an Addition may be uſed or omitted at pleaſure, except in ſome ſpeciall caſes, where proceſſes of

Utlary lyeth, as hereafter followeth, the title of *Supremum caput ecclesiæ Anglicanæ*, which was by Act of Parliament, in the 26. yeer of *H.8. c.1. & an.35. H.8. cap.3.* annexed to the Emperiall Crown of this Realm, is no parcell of the King's stile: but only an addition of the Kings stile, so that it may be omitted in the Summons of the Parliament (as it was done in the first yeer of Queen *Mary*) or used, as it was by the late Queen *Elizabeth*, and by the King that now is, at his pleasure, and so it is adjudged as you may read in *Dyer*, In the first yeer of Queen *Mary*, *Fol.*98. And so is the Law declared by authority of Parliament. 1. & 2. *Phil. & Mary*, *cap.*8. 256. See in *Fox* his Book of *Martyrs*, *Fol.*217. An argument made by *Hales* contrary.

But between the Majesticall stile of the King, and the title of honour, appertaining to a Subject; this difference is between grants or purchases made by, or to the King; and grants or purchases made by, or to a Nobleman, &c. For in that first Case it is necessary, that the Name of Kings be expressed, otherwise they are voide and of none effect. But if a Duke, Earl, or other of the Nobility do purchase, or grant by the Name of Baptism, and surname, omitting other title of honour; it is not void, but good enough, for it is a rule in the Law, That every mans grant shall be construed most strongly against the grantor, and must for the benefit of him, to whom the grant is made, and so *ut Res magis valeat quam pereat*, that the matter may rather be strengthened, then void; for there is a great diversity in Law, between Writs and Grants; for if Writs be not formally made, they shall be abated, which is no greater prejudice, then the purchasing another Writ;

But

But if a Grant should so Ligerfie, be made void, then the party hath no remedy to have a new; for that cause the Law doth not favour advantages, by occasions of Misnomer, more then the strict rule of the Law doth require, *Cooks 6. part. 64. b. Et sequentia*, false Latine shall abate a Writ, but not a Grant, *Ibidem.*

And if an Earl be Plantiff or Demandant, and hanging, the Writ shall not abate; but nevertheless he shall proceed and count by the name of an Earl, according to such title of honour, as he did bear at the time of his action commenced, *Pasch. 13. Edw. 3. brief 259. Pasch. 19. Edw. 3. Procedendo. 2. 32. Hen. 8. 39. 7. Hen. 6. 14. b. Et sequentia. 25. Ed. 3. 39. 22. Rich. 2. brief 9. 37. & Pasch. 24. Edw. 3. 14.* But if the Plantiff in a *quare impedit*, be made Knight, hanging the Writ, the Writ shall abate, *Cooks 7. part. 27. b.*

There is a Statute made in the first yeer of *H. 5. c. 5.* where in is contained as following.

Item, It is ordained and established, that in every Originall Writ of accounts personall, Appeals and Indictments, in which the Exigent shall be awarded in the Name of the Defendants. In such Writs, originall Appeals, and Indictments, addition shall be made of their estate and degree, or mistery, and the Towns, Hamlets or places, and the Countries where they were, or be conversant, and if by Processe upon the said Originall, Writs, Appeals or Indictments, in the which the additions be omitted, any Outlaries be pronounced, the said Writs and Indictments shall be abated, by the execution of the party, wherein the said additions are omitted, provided alwayes, that though the said Writs of additions personall, be not according to the Records,

and deeds by the surplussage of the additions aforesaid, That for this cause they are not abated; and that the Clerks of the Chancery, under whose names such Writs shall go forth written, shall not leave out or make omission of the said Additions, as is aforesaid, upon point to be punished, and to make a fine to the King by the discretion of the Chancellor. And this Ordinance shall begin to hold place at the suite of the party, from the feast of Saint *Michael* next ensuing forwards.

Although the addition of estate, degree and mystery to be added unto names, be written in the Statute, first and before the additions of place and Counties, yet it hath been used alwayes after the making of the said Statute, to place the additions of estate, degree, and mistery, after the places and County in every Writ, Appeals and Indictments against common persons.

But the use is otherwise in Appeals and Indictments of Treason or Fellony against Dukes, Marquesses, and Earls for their names of degrees, are in such Cases put before the Additions of places and Counties, as *Charles* Earl of *Westmerland*, late of *Bramspeth* in the County of *Durism*. *Thelowell. lib. 6. cap. 14.*

Names of dignity, as Dukes, Earls, Barons, Knights, Serjant at Law, &c. Be contained within this word degree, for *gradus continet statum in se, & non è contrario*, degree doth contain state in it self, and not of the contrary; for the state of a man, as Gentleman, Esquire, Yeoman, Widdow, single-Woman, &c. And the art or craft of a man is his mystery, by *Brook* chief Justice in the Common-Pleas, in abridgement of the Case of 14. *Hen. 6. fol. 15. titul. nosve dignitat. 33.*

See in *Cooks* 8. *parts* 156. *John Stile* is bound by obliga-

obligation to *W. B.* the obliger is afterwards made into a title of honour, or a Knight, the Bond is forfeited *W. B.* by his Arturney draweth a note or title, for an originall, according to the Defendants degree (although it vary from the specialty) as it ought to be made by the Statute, but the Curitor mistaking, did make the originall onely, according to such addition as was specified in the obligation, omitting his degree of dignity, and the entry of the *Capias alias & plures*, was according to the said Originall, but in the Exigent, and Proclamation, and in the Entry of it, the Defendant was named according to his degree of dignity, upon a Writ of Errour, after judgement doubt was, if this might be amended in another Court, then where the originall was made.

Injuries done to the name and honour of a Nobleman.

IN the second yeer of *Richard* 2. in the first Chapter, It was inacted, that counterfeiters of false news, and of horrible and false lyes of Prelates, Dukes, Earls, Barons, and other Nobles, and great men of the Realm; and also of the Chancellor, Treasurer, Clerk of the Privy Seal, Steward of the Kings Houſe,

House, Justices of the one Bench, or of the other, and of other great officers of the Realm, of things which by the said Prelates, Lords, Nobles, and Officers aforesaid, were never spoken, touched, nor thought in great slander of the said Prelates, Lords, Nobles, and Officers, whereby debates, and discords might arise betwixt the said Lords, and Commons, (which God forbid;) and whereof great perill and mischief might come to all the Realm, and quick subversion, and destruction of the said Realm, if due remedy be not provided. It is straightly defended upon grievous pain, for to eschew the said dammages, and perils, that from henceforth none be so hardy, to finde, say, or tell any false news, lyes, or other false reports of Prelates, Lords, and of other Officers aforesaid; whereof discord, or any slander might arise within the said Realm, and he that doth the same, shall incurre, and have the pain ordained thereof by the Statute of *Westminster*, in the first Chapter 33. which will, that he be taken and imprisoned, till he have found him, of whom the word shall be moved.

And further, By another Statute made in 22. *Richard* 2. *cap.* 11. It was moreover enacted, That when the said offender is taken, and

and imprisoned, and cannot finde him that spake the words, then he shall be punished by the advise of the Councell. And to the intent that such evill disposed persons, which by their lewd speeches and slanderous words or reports, do endeavour, to break, or disquiet the peace of the Realm, might the sooner be inquired, found out, and punished, by a Statute made *Anno* 2. *Phil. & Mary.* It was further established, That the Justices of Peace in every, Shire, City, or Town Corporate, within the limits of their severall Commissions, shall have full power to examine, hear, and determine the causes aforesaid, in the said two Acts of *Edward* the first, and *Richard* the second specified, and to put the said two Statutes, and every branch in them contained in due execution, that condigne punishment be not deferred from such offenders; and besides, the afore mentioned penalties affigned to be inflicted upon transgressors, by the aforesaid Statutes, every Nobleman, and great Officer of the Realm, against whom any scandalous words, false news, or lyes be spoken, may prosecute against the offender, an action, *de scandalis magnatum*, and recover dammages against him; and in like sort, may every inferiour

person

perſon, for any ſuch like words of infamy againſt him, perſue an action upon his cauſe againſt the offender, and recover his dammages.

And if any perſon ſhall exhibite a Bill into the Starrechamber againſt a Nobleman (or other,) and amongſt other things, charge him with murther, piracy, robbery, or other fellony, or to be a procurator thereof, or acceſſary thereunto, or with any other offence, which is not examinable in the ſaid Court; the defendant in the ſaid Bill, may proſecute againſt the complanant therein, an action upon the cauſe, and recover his dammages, for his Bill was exhibited of malice by the complainant, to remain of record in the ſaid Court, to the infamy and ſlander of the defendant, and not puniſh him for the ſaid offences ſuggeſted in the ſaid Bill by a courſe of Juſtice, ſeeing the Court of Starrechamber hath no authority to inquire of, or puniſh the ſame offence; but if the complainant did ſuggeſt in his Bill of complainant, any matter againſt the defendant, which is examinable in the ſaid Court, then no action upon the caſe is maintainable againſt him by the defendant, therefore though the matter ſurmiſed be meerly falſe, for it is done in courſe

courſe of Juſtice *& ſub judice lis eſt*, whether the matters ſuggeſted be true, or falſe, untill they be proved: And in former ages, ſpeeches tending to the reproach of others, were ſo odious, that King *Edgar*, *Le.* 4. ordained that his tongue ſhould be cut out, which did ſpeak any infamous, or ſlanderous words of another. *Dyer.* 285. and in *Kelway.* 13. *Henry* 7. 27. *Cooks* 4. *part.* 14. *Book.* 2. *Richard* 3. 9. 6. In which Book you may read at large, where the Lord *Beauchampe* did ſue an action upon the Statute of the 2. *Rich.* 2. *cap.* 5. *de ſcandalis magnatum* againſt Sir *Richard Craſts*, becauſe he did ſue a Writ of forging of falſe deeds againſt the ſaid Lord *Beauchampe*, and the defendant doth juſtifie the ſaid ſlander by the uſe of the ſaid Writ, &c.

And the demurrer was good, and out of the intendment of the Common Laws, or Statute Laws, concerning ſlanderers; for no puniſhment hath been at any time appointed for ſuits in Law, though the matter be falſe, and for vexation only, other then amerciaments, or fine to the King; and therefore the plantiff is ſufficiently diſcharged againſt the ſaid Lord *Beauchampe*, not only for the time that the ſuite is depending, but

but after the action tryed, or otherwise ended, yea, though the Plantiff were non-suited, or by other means it went against him; for if actions of revenge upon the event it would terrifie, and discharge many, who have just cause to complain for fear of infinite vexations for the event and successe of suits, and matters in action, is uncertain, *Cooks 6. part 40. a.*

There is another foul puddle that ariseth from the same corrupt quagmire, and distilleth out of a heart, likewise infected with malice and envy; but is divised, and practised by another mean, then the former, which is by libelling, secret slandering and defaming of another, for this privy backbiter, doth not by words impeach his adversary in so manifest and turbulent manner, as the collerick menacer in his fury doth, seeming to sit quietly in his Study, he doth more deeply pinch him, and infixeth a more durable wound into his fame and credit, then the other boysterous fellow doth in his body, who in a moment, threatneth to do more then peradventure he after is willing, or dareth to do in an age. The Menacer layeth open his Name, and his grief, and standeth in the face of his enemy, and discovereth the

the corrasive of his, and doth thereby give a forewarning to his adversary, to provide for, and defend himself.

But this secret Canker the Libeller, concealeth his name, hideth himself in a corner, and privily stingeth him in fame, reputation, and credit; who then neither knoweth from whom, or for what cause he receiveth his blows, nor yet hath means therein to defend himself; and whether his libelling, secret slandering, or defaming, be against a publike Magistrate, or private Person; Yet it may tend to the breach of the peace, to the raising of quarrels, and effusion of bloud; and so may be a speciall impediment, which all good policy endevoureth to maintain; for if it be against a publike Magistrate, it is a great scandall, and offence to the King his chief Magistrates, and the whole Government of the Realm, to assign such an Officer to rule and govern others, who himself is voyd

Note, That if a man do write unto another scandalous words, and reports, touching a Nobleman, and this Letter be signed with his Seal, and subscribed with his name; yet upon this Letter, shewed upon evidence, the Nobleman may recover dammages in an action, *de scandalis magnatum*, whereof you may see two Presidents in *Crompton Iustice of Peace.* 85.

But if a man do write any matter of defamation to the party himself, that is thereby traduced and subscribe, and seal the same without other publication done by himself *Quere.*

voyd of government, and shall deserve to be impeached with such crimes, as he shall be taxed with, or shall be imputed unto him by such an infamous Libell; and if it be but against a private person; yet seeing that a Libell, or other note of infamy is intended to defame him, to tread his honour and estimation in the dust, and root out his reputation and credit from the face of the earth, to make him a scorn to his enemies, and to be derided and despised of his neighbours; it doth greatly kindle the wroth of him, and of such as be of his kindred and allies, and true friendship, and urge them to revenge; whereupon, do often times ensue grudges, quarrels, frayes, combats, and man-slaughter. Sometimes the malicious defamer, powreth out his venome in writing, by a scandalous Book, Epigram, or Rime, either in Meeter or Prose. Some other times by songs, scoffs, jests, and taunts, and divers times by hanging of pictures of reproach, signes of shame, or tokens of disgrace neer the place the party thereby traduced, doth most converse, as the picture of the gallows, pillory, cucking-stool, horns, or other such like. In which cases, the Law hath provided, that the party delinquent, when he is found out, and discovered, shall be

be sharply punished: For he may be either indicted for the same offence, by the ordinary course of the Common-law, or else a Bill may be exhibited against him in the Starre-chamber, where he shall be punished, according to the quality of his demerits, by fine, and imprisonment; and if it be an exorbitant offence, then by pillory, losse of his ears, whipping, &c. Or the party grieved, may have an action of the case against the offender, and recover his dammages: And in this case it is not materiall, whether the Libel be true or false, or the parties scandalized thereby, be living or dead, or be of good name or evill, for though the party be defamed, and the Libell true be evill, yet our good Laws be provided to punish him, and such like evill men by due course of Justice, after his offence is presented, inquired of, tryed, and proved to his face, before lawfull Magistrats, thereunto assigned, and he is not to be carped, accused and condemned in a corner behinde his back, by any other private person, who in trudeth himself without warrant to be a Censurer of manners, and rather seeketh the discredit of the party then, then the reformation of his faults, for his secret searching into, and sifting into other

mens conditions, diving into their offences, and divulging them to their discredits doth convince the offender to be a man of a lewd disposition to have made shipwrack of his conscience, and doth brand him, during his life, with the name of an infamous Libeller, or scandalous backbiter, *Fardinando Pulton, Fol. 16. Cooks 5. part. 125.*

And to conclude this matter, concerning the wrong done to the name and dignity of a Nobleman, this may be added, That it is unlawfull for any person to usurpe the Arms of another. *Cook* to the Reader before his third Book, *Fol.* 8. to *A.* Yea, if a Noblemans Coat, Armour, or Sword, or other Gentlemans bearing Arms at the solemnizing of their Funeralls, set up in the Church Chappel or Chancell, for the honour of the body defunct be taken down by the covetousnesse of the incumbent there, pretending them as offerings due to him, or if they be defaced by any other; such are to be punished grievously as malefactors, and in that case the action shall not be given to the Widdow, though she be Executrix or Administratix of her husbands goods for such things as serve for the honour of the party deceased, are not to be accompted *inter bona Testatoris*, as the goods

of

of the Testator; but the heirs shall have the action as the defender of his Ancestors honour, *Nam cui injuria ei averuat jus*, to whom the wrong is done, right doth belong; but the wrong is offered to the house and bloud; and therein especially to the heir, *qui est totius genituræ splendor*, of the whole kindred; and therefore to him attaineth the right of action in the case.

Viscounts.

NExt unto Earls or Counts in order, followeth the Vicount, this is an ancient name of Office, but a new title of honour, and by *Henry* the first brought in, who conferred that title upon *John* Lord *Beamont*.

Barons.

AMongst the Nobles and Honourable; Barons have the next place, and the last of the Rank; It now followeth somewhat to speak in generall of the dignity and degree of a Baron. First, the definition or description of a Baron. Secondly, The Etymologie of the name. Thirdly, The antiquity thereof, and the divers uses of the name in former ages. Fourthly, The divisions and considerations of the severall kindes of Barons.

And lastly, A declaration of the divers and sundry priviledges allowed by the Laws of this Realm, unto the Barons and Nobility of the same; wherein the vulgar and common person hath no participation.

The Definition or Description of a Baron.

IT is a rule in Law, that definitions *in Jure sunt periculosissima rarium est enim unum subverti possunt.* And therefore I do not often finde any definition or a description of a Baron delivered by writers. Nevertheless in this our Common-wealth of *England*, me thinks that a Baron may be described in a generalty, answerable to every kinde thereof in this manner.

A Baron is a dignity of Nobility and Honour, next under the Vicount above the *Banneret* and *Valvasor*, adorned with the title of Lord, holding with us the same place, as did the *Patricii* or *Senators* amongst the *Romans*. The Books of Law do make difference between Dukes, Earls, Marquesses, and Vicounts, which are allowed names of dignity, and the Baron: For they affirm that Baron needs not to be named Lord or Baron by his Writ; But the Dukes Marquesses, Earls, or Vicounts ought to be named by their names of dignity, 8. *H.* 6. 10, 32. *H.* 6. 3. *Cook* 8. *parts* 53. *b. a. part. Pigot. Lambert.* l. 4. 488. *Cambden fol.* saith, that our common Lawyers do not allow a Baron to be one of the degrees of the Nobility: Nevertheless, I do take the Books are to be understood of the Barons by Tenure, or Barons by Writ

Writ only: For the title of a Baron by Patent, is in his Letters Patents, under the great Seal adorned and named by the stile of *Statur gradus & dignitas*; and therefore as requisit to be named, as such dignities are a parcell of the Name of the possessor, as well as the Stile and Title of a Duke, Marquesse, Earl, and Vicount, &c.

And although there may be conceived this difference last mentioned between the Baron by Tenure or Writ, and the Baron by Patent; yet they being all Members of the higher House of the Parliament, they are thereby made equally Noble, Honorable, and Peers of the Realm as they are Barons only, without any other distinction that I have observed; and thus much concerning the three degrees of Barons within this Realm may suffice to be said in generall upon this occasion for the better understanding and direction of the rest to be handled.

The Etymology and Derivation of the Name Baron.

MAny Wits have laboured to yeeld the Etymologie and signification of this word; wherein following their own fantasies, there hath been bred much variation of opinion. As for Etymology of words, I agree with him that saith, That it is *Levis & fallax & plerumque ridicula, for sæpenumero ubi proprietas verborum attenditur sensus veritatis amittitur.* It may have some use, and serve a turn in Schools, but it is to light for judgements in Law, and Seats of Justice, *Cook 7. part. l. 27. b. Thomas Aquinas* setteth down a more certain rule in

vecibus videndum non tam à quo quam ad quid fumitur, and words should be taken, *sensu currenti*, for use and custome is the best expositor of Laws, and words, *quæ penes Arbitrium & jus & normam loquendi*. In the Lord Chancellors Speech in the Case of *Postnati. fol.* 61. And forasmuch as the word may aptly import men of strength, *Bracton* as before appeareth, not unaptly useth this signification thereof, in these words, *Sunt & alii potentes sub Rege qui dicuntur Barones hoc est Robur belli.*

The Antiquity of the Dignity of Barons, and the sundry uses of the Name.

IT seemeth that the dignity was more ancient, then the Name, for in the ancient *Constitutions Feodall* of the Land, there is no mention made of the name of Barons, howbeit, the learned Interpreters do understand, that dignity to be comprehended under those which are there called *Valuasores Majores*, and afterward called *Capitanii*, for of the *Valuasores*, there were three kindes *Valuasores*, *Majores*, *sive Capitanii*; which are thought to be the Barons, *Valuasores minores* and *valuasini* or *valuasores minimi*. The like dignity within this Realm before the Conquest had those, which of the English *Saxons* were called *Thanes*, whereof read *Lambert* in his Preambulation of *Kent. Fol.* 366. And the Book of Dooms-day, remaining in the treasury of the Exchequer. Nevertheless, the name of the Baron was not much used within this Realm untill the *Normans* Conquest,

queſt; and after that the word Baron ſeemeth to be frequented in this Realm in lieu and place of the word *Thane* among the Engliſh Saxons, for as they in generall and large ſignification, did ſome time uſe the ſame to the ſence and meaning, and to import a Free-man, borne of a free parentage, or ſuch like; ſo did the *Normans* uſe the word Baron, and therefore called their free Citizens of their beſt eſteemed Cities, and free Burgeſſes of their beſt eſteemed Towns and Borroughes by the name of Barons. And ſo the Citizens of *London*, Barons of *London* in divers ancient Monuments, of whom alſo *Bracton* maketh mention, *Fol.* 272. *a.* Alſo there are divers Charters, wherein mention is made of ſuch like Barons, as the Barons of *Warwick* in the Record of *Doomſday*; and even to our time the free Burgeſſes of the five priviledged Ports are called Barons of the Cinque Ports. And for that alſo divers of the nobility of Barons, as well ſpirituall as temporall, did in ancient time ſit in the Exchequer to determine the difficulties and doubts there ariſing; The Judges of that Court have been from moſt ancient time called, and yet are Barons of the Exchequer.

Moreover, the Engliſh Saxons had two kindes of *Thanes* the like hath been obſerved; as touching Barons for the Kings and Monarchs of this Realm have had their immediate Barons being the Peers of the Realm; and in like manner, certain other of the Nobility, eſpecially Earls, which have had juriſdiction Palatine, and Earls Marchers, whoſe Countries have confined upon the coaſts of the enemy; have had under them for their better defence, a kinde of Barons. As namely under the County Palatine of *Cheſter*, were theſe Barons, the Barons of *Halton*, *Montbalt*, *Malebanck*, *Shipbrooke*, *Malpaſe*, *Maſſy*, *Rinderton*, *Stockport*, &c. The Earldom of *Pembrook*

brook in *Westwales* being first erected by *Arnulphus Montgomery*, that conquered part of that Country. And therefore the Earls thereof, being an Earl *Marcher* had also under him his Barons, as appeareth by the Parliament Rolles, 18. *Ed.* 1. It hath been therefore a common opinion received, that every Earldom in times past had under it ten Barons, and every Barony ten Knights Fees holden of him, and that those that had fourteen Knights Fees were usually called, and promoted to the dignity of Baron. Also Lords and Proprietors of Manors, were in respect of them oftentimes in ancient remembrance cal'd Barons (but abasiveth) and the Court and their Mannor called thereof Courts Barons, of which *Glanvile* speaketh, *Fol.* 67. *l.* 8. *c.* 11.

It resteth now for the more explanation of the use of the name of Baron, that we call to remembrance, that which hath been before spoken, that the custome of our Countrie is, that if a Baron be created an Earl, the eldest son of the said Earl in the life of his Father, taketh upon him the name and title of the Barony, although he want the Priviledges belonging to a Baron.

The tenor and proper signification of the word Baron.

BArons honourable, are of three kinds, by Tenure, by Writ, by Creation; As for Barons by prescription, which some men have spoken of, they are intended to be all one with the Barons by tenure, or those whose Ancestors time out of minde, have been called to the Parliament by Writ; for otherwise there are hardly such to be found as are Barons by prescription only.

Barons

Barons by Tenure.

Barons by tenure are those which doe hold any Honour, Castle, or Mannour as the head of their Barony *per Baroniam*, which is Grand Serjeanty: And these Barons by tenure are of two sorts; Barons spirituall by tenure, and Barons temporall by tenure. Of Barons spirituall by tenure sufficient is said before in the first leafe of this Treatise, whereunto this may be added, That it appeareth by all ancient Writers of our Lawes, as *Britton*, *Glanvile*, *Bracton*, and the rest, that the Archbishops and Bishops of the Realme in the ancient Saxons dayes, as well during the time that this Realme was divided into divers Kingdomes, as also after the uniting of them into one Monarchy, were called to the Parliament or Assembly of States or wise men, not so much in respect of their tenure, for in those dayes all their tenures were by franck almoigne; but especially for that the lawes and counsels of men are then most currant and commendable, and have a more blessed issue and successe, when they are grounded upon the feare of God, the root and beginning of all true wisdome: and therefore our wise and religious Ancestors called to their generall Councell, or *Witten Agmote*, or Court of Wisdome (as they called it) those chiefe and principall persons of the Clergy, which by their place and profession, by their gravities, learning, and wisdome, might best advise what was the law of Gods acceptable will and pleasure, that they might frame their humane lawes answerable, or at least not contrary and repugnant thereunto.

As touching the temporall Barons by the tenure, mention is made of them in the Books of the Law, Records, and ancient Monuments of the Realme: these are the words of *Glanvile*; *Mortuo enim aliquo capitali Barone suo, statim Baroniam in manu sua retinet Rex, donec hæres garantum suum fecerit de relivio, licet hæres ipse plenam habuerit ætatem:* Which reliefe of Barons for the Barony by tenure was at that time uncertain, and rentable at the pleasure of the King: Of which also he writeth thus. *Dicitur autem rationabile relivium alicujus juxta consuetudinem regni, de feodo unius Militis centum solidos: de soccagio verò, quantum valet census illius soccagii per unum annum. De Baronis verò nihil certum statutum est, quia juxta voluntatem & misericordiam Domini Regis solent Baronii capitales de reliviis suis Domino Regi satisfacere, lib. 9. cap. 4.* But such uncertainty was brought to certainty by the statute of *Magna Charta cap. 2.* so here we have speech of the Barony Temporall by tenure, and of the reliefe due for the same.

In *tertio H. 3.* there was argued an ancient Prerogative belonging to the Crowne, and usuall even from the Conquest unto these times, authentickly written in these words, and so reported by *Fitzherbert*; *Quòd si aliquis Baro Domini Regis tenens de Rege obiisset, & non haberet hæredes nisi filias, & primogenitæ filiæ maritatæ sunt in vita Patris, Dominus Rex daret postnatam filiam, quæ remaneret in hæreditate patris, alicui milit' suor', cum tota hæreditate Patris sui de qua obiisset seisitus, ita quòd alia filiæ nihil recuperent versus postnatam filiam in vita sua: Et omnes Reges habuerunt hanc dignitatem à conquestu.*

Also *Bracton lib. 5. fol. 351. & fol. 357.* doth make expresse mention of Barons temporall by tenure.

It shall be needlesse here againe to remember the former alledged

alledged assertion of *Bracton*, that the head of a Barony descending unto daughters should not be divided by partition, which argueth likewise the tenure by Barony. But let us descend to other authorities, that is to say, to the Book-case in 48. *E.* 3. *fol.* 30. Sir *Ralph Everden* his case; by which case of law is most evidently proved that there are Barons by tenure, and in regard of such their tenure ought to be summoned to Parliament. And to this purpose you may read a private statute in the eleventh yeere of *Henry* the sixth mentioned also in *Cambden* concerning the Earldome of Arundell: and also another statute to the same purpose made 27. *H.* 6. for the finall determination of a controversie between *William* Earl of Arundell, and *Thomas* Earl of Devonshire, for place and preheminence in Parliament.

I would wish that those who deny that there were or are any Barons by tenure, should consider advisedly the statute of Westminster the 2d. *cap.* 41. where the Fees of the Earle Marshall and Lord Chamberlain are expressed, which are to be taken by them, upon the homage done of every Baron by tenure, whether the Baron holdeth by whole Barony or by lesse.

But ere I proceed further, there ariseth a question here to be considered, the resolution whereof may give great light, and in a manner determine the matter in hand. The Question therefore is this.

Question.

If a Baron by tenure alien and grant away the Honour, Castle, and Mannour holden by Barony, whether shall such alienee or grantee take upon him the state title and dignity of a Baron or no? and what shall become of such a

dignity of Baronage after such alienation or grant made?

They which do deny that there are any such Baronies by tenure, do use these as their chief and principall motives and reasons.

First, if there be any Baronies by tenure, then the alienee or grantee of such Honour, Castle, or Mannour so holden, must hold by the same tenure that his feoffor or grantor before held; But that was by Barony; Therefore such alienee or grantee must hold by Barony: And if such grant or alienation be made to persons base, vulgar, or ignoble, they then should by such tenure be made noble, which were marvellous absurd and full of inconveniency; for, *Non Dominus domo, sed domus Domino honestatur*, see *Tho. Mills Peerage fol* 3.

Secondly, it is very evident and manifest that many ancient Mannours which in old time were holden *per Baroniam*, and were the Head of Baronies, are now in the tenure of mean Gentlemen, and others, who neither doe or may challenge unto themselves in any respect thereof any Nobility, without the great and high displeasure of the Kings most excellent Majesty, who is the fountain of all Nobility within his Dominions.

Thirdly, some ancient Barons there are which have alienated and sold away those Castles and Mannours, of the which they have and beare the name and dignity of Baronage, and yet themselves doe still retain and lawfully keep their estate, dignity, and degree of Baron, and have been and usually are (such alienation notwithstanding) summoned nevertheless to the Parliament, and they do take and hold their ancient place according.

The Answer.

For the better answere to be made to these objections, being

ing of all others the moſt materiall and of moment uſed in this behalf, it ſhall be convenient for the more eaſie unfolding the ſtate of this queſtion, to exhibite certain neceſſary and requiſite propoſitions; and upon them to draw true and infallible concluſions, and then to prove them by authority of Law, conſent and time, and manifold preſidents: which done, the anſwere will be eaſily made (as I conceive) to every of the foreſaid objections.

Firſt therefore, if a Baron by tenure, which holdeth any Caſtle, Honour, or Mannour *per Baroniam*, do alien or give the ſame, either he doth it without any licence obtained from his Majeſty ſo to do, or elſe by ſome certain licence in that behalf obtained.

If he doe it without licence, then the concluſion is certain by the lawes of this Realme, the Barony, Caſtle, Honour, and Mannour ſo aliened without licence or conſent is forfeited; and the ſame Honour, Caſtle, or Mannour ſo holden by Barony, and ſo aliened, is to be ſeiſed into the Kings hands for the ſaid forfeiture, and ſuch dignity and eſtate no longer to be borne and continue, but to be reſumed and extinguiſhed in the Crowne, from whence it was derived. Read hereof in *Stamfords Prerogative cap.7.* But *nota in Cook 2.part 80.b.*

The reaſon thereof is notable, if we call to remembrance that which was formerly alledged out of *Bracton*; That Baronies are the ſtrength of the Realme, and ſuffer no diviſion; they ſuffer alſo no alienation, without the conſent or licence of the ſoveraign Monarch; for ſo ſhould the Realme be enfeebled, and baſe perſons enabled, without deſert of vertue or proweſſe. For where the thing ſo aliened is an Honour or head of the Barony, it differs much from the ordinary tenure *in capite*, whereof if the Tenant make alie-

nation without licence, hee is onely to pay fine by the statute 1.E.3.cap.12. whereof also before the making of the statute there was diversity of opinion at the Common Law after the statute of *Magna Charta*. But let me cite some authorities for the proofe of these allegations. *Glanvile* the most ancient Writer of the Lawes of this Realme now extant, hath these words: *Notandum autem, quòd nec Episcopus, nec Abbas, quia eorum Baronie sunt de eleemosyna Regis & Antecessoris ejus, non possunt de Dominicis suis aliquam partem dare ad remanentiam, sine assensu & confirmatione Domini Regis, lib.7.cap.1.in fine, & statut. Westm. cap.43.*

In *Edward* the thirds time certaine land, being parcell of the Barony of *Brember*, was aliened by *William de Bruse* the Baron thereof, without licence of the King; and in the argument of a cause concerning the same, *Greene* one of the Judges delivereth this for law, That parcell of a Barony or Earldome held of the King in chiefe, cannot be aliened or dismembred without his licence; and if it be, it shall be seised into the Kings hands as forfeit, and the King shall be seised thereof in his own right again.

In 46.E.3. it was found by office that *William* Bishop of Chester had leased unto one *John Peston* for his life a Mannour, which was parcell of the Mannour of the said Bishopricke, without licence; and it was resolved by the Judges and other of the Kings Councell, that the same was forfeit; but by mediation of the said Councell the Bishop submitted himselfe to the King, and made a fine; and several *Scire facias* issued out against them that had received the maine profits, to answer unto the King thereof. And thus much concerning alienation of Baronies without licence.

But on the other part, if a Baron by tenure which holdeth any Honour, Castle, or Mannour by Barony, do grant

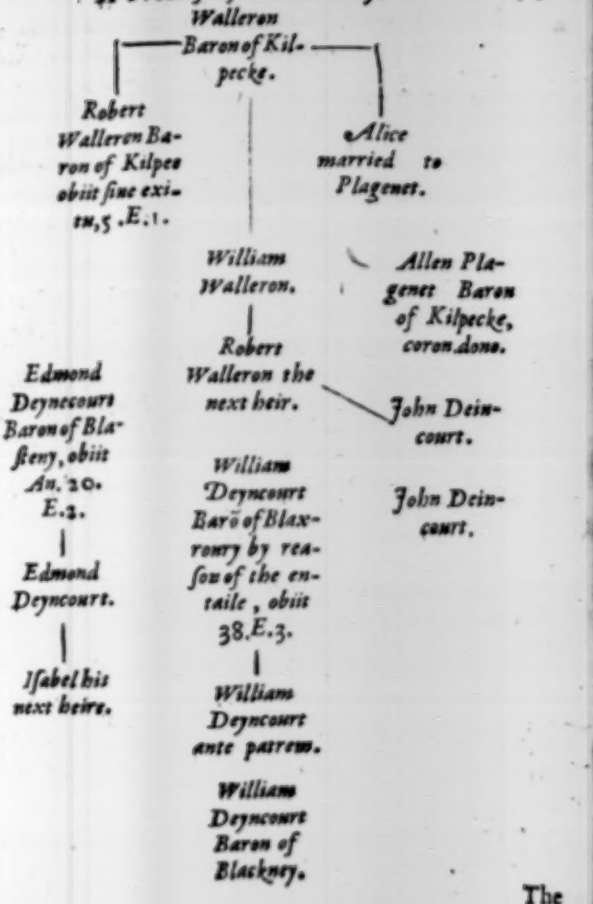
or alien the same by licence, I must again distinguish: For either such alienation is made for the continuance of his Barony, Honours, Lands and Tenements, in his owne name, blood, issue male: Or else the same alienation is made for mony, or other recompence, or otherwise, to a meere stranger: and hereof ensueth this second conclusion or assertion.

That if such alienation be made for the continuance of the Barony in his name and blood, or issue male (as many have made the like) then have the issues male together with the Barony, be it Castle, Honour, or Mannour so holden, held also and lawfully enjoyed the name, stile, title, and dignity of a Baron; and thereof have the heires generall, or next heires female been excluded and debarred. And for the proof of this assertion there may manifold presidents be produced, wherof certain have happened almost in every age for 300 yeers space; namely, so long in effect as there have bin observations thereof: of which some certain doe ensue.

It appeareth by an office found after the death of *William de Ferrariis* Lord of Grooby 23. *H.6.* that *Margaret* Lady of Grooby gave to *William Ferrars* her second sonne, and to the heires of his body, the Mannour of Grooby, &c. By vertue of which gift, the said *William Ferrars* and his heires were ever after Barons of Grooby.

Robert Walleron Baron of Kilpeck died in 1. *Ed.* 1. without heires of his body; and *Robert Walleron*, sonne of *William*, brother of the said *Robert*, was his next heire: yet notwithstanding the said *Robert* dying gave to *Allen Plagent* sonne of *Alice* his sister, the Castle, Mannour, and Lordship of Kilpeck, with the appurtenances, To have unto the said *Allen*, and to the heires of his body comming, as appeareth by his office, &c. By vertue of which gift the said *Allen* was Baron of Kilpeck, and summoned among other Barons to the Parliament: and he died 27. *E.* 1.

Walleron


Walleron
Baron of Kilpecke.
Robert Walleron Baron of Kilpec obiit sine exitu, 5. E. 1.
Alice married to Plagenet.
William Walleron.
Allen Plagenet Baron of Kilpecke, coronadono.
Robert Walleron the next heir.
John Deincourt.
Edmond Deynecourt Baron of Blasteny, obiit An. 20. E. 2.
William Deyncourt Barō of Blaxronry by reason of the entaile, obiit 38. E. 3.
John Deincourt.
Edmond Deyncourt.
Isabel his next heire.
William Deyncourt ante patrem.
William Deyncourt Baron of Blackney.

The

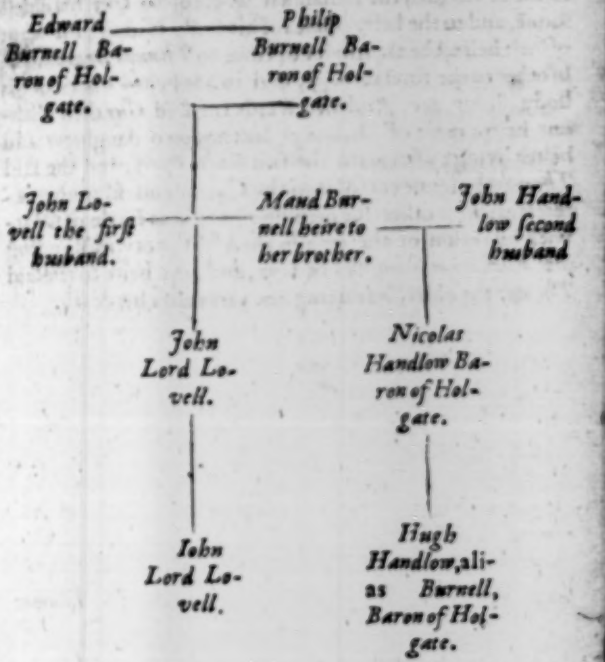
The King to all Christian people sendeth greeting, &c. Know ye that whereas lately, for that our well-beloved and faithfull subject Edmond Deyncourt *pondered and considered that both his Sirname and also his Armes after his death, the person of* Isabell *daughter of* Edmond Deyncourt *his heire apparent, should be blotted out of memory, most earnestly he desired that his Sirname and Armes after his death for ever might be had in remembrance: To whose request, for the worthy service as well to our father* Edward *late King of England, as also to our selfe, by our Letters Patents doe grant and give licence for us and our heires, so much as in us lyeth, to the said* Edmond, *to dispose and give all his Manours, Lands, Tenements, and Knights fees, with their appurtenances and Advowsons of Churches, Abbies, and Priories, and Hospitalls, which he holdeth of us in chiefe, to whom he pleaseth, To have and to hold to him and his heires, for us and our heires, by the service thereof for ever.*

By which Grant the said *Edmond* gave all his Lands and Tenements to one *William* sonne of *John Deyncourt*, and to his heires of his body comming: And the said *Edmond* dyed the last yeere of *Edward* the second, and the said *William* in the time of *Edward* the third was summoned among other Barons to the Parliament, by vertue of the same gift, until his death, which was *Anno 3. E. 3.*

It appeareth by divers offices in the time of King *Edward* the third, that *John Handlow* in the right of *Maud* his wife was seized of the Mannour of Holgate, Acton Burnell, &c. for terme of her life, remainder to *Nicolas Handlow* alias *Burnell*, sonne to the said *Maud* and *John* by a fine in the Court levied, and that *John Lovell* was next heire of the said *Maud*, and her first-borne sonne by her first husband:

and

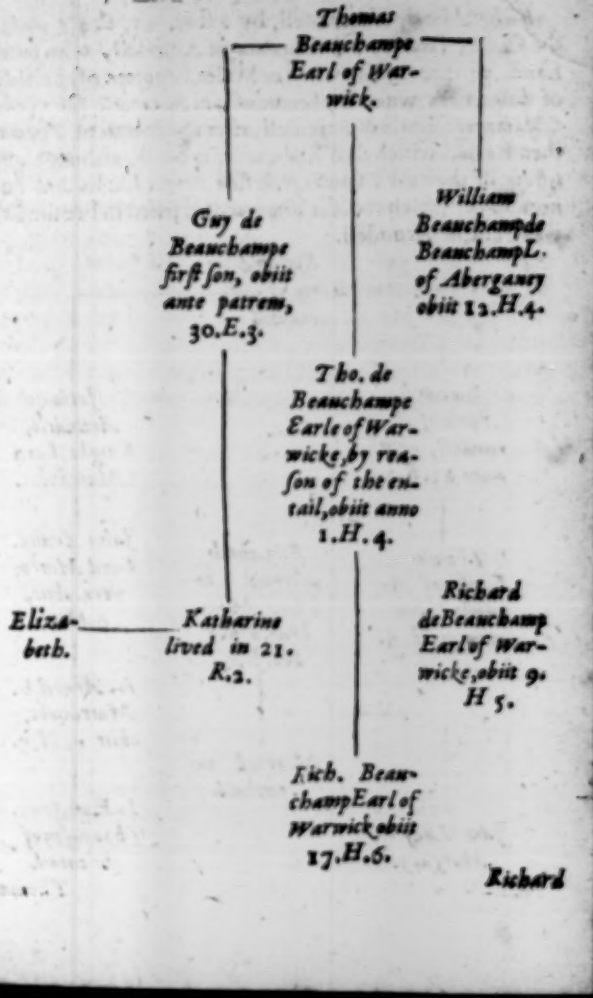
and afterwards the said *Nicolas* was summoned among other Lords to the Parliament, by reason of the fine aforesaid, and not the said *John Lovel*, who was next heire.



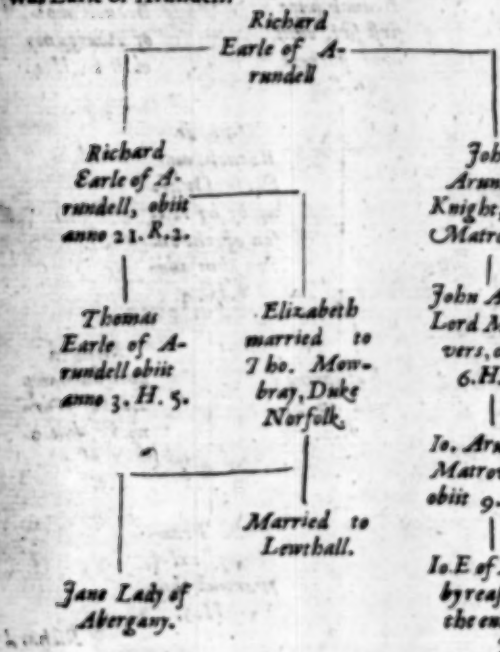
Thomas

Thomas de Beauchamp the elder Earle of Warwick, by a fine levied 18. *E.* 3. entailed the Mannour and Castle of Warwicke, with divers other possessions, to himselfe for terme of his life, the remainder whereof to *Guy* his eldest sonne, and to the heires males of his body issuing; for want of such heires the remainder to come to *Thomas Beauchamp*, brother to the foresaid *Guy*, and to his heires males of his body issuing, &c. And afterwards the said *Guy* died without heires male of his body, leaving two daughters and heires living: afterward the said Earle dyed, and the said *Thomas* the sonne entred into the Castle and Mannour aforesaid, with other the premisses, and was Earle of Warwick by reason of the entaile aforesaid, notwithstanding that *Katharine*, daughter of *Guy*, and next heire to the said *Thomas* the elder, was living 30. yeers after his death.

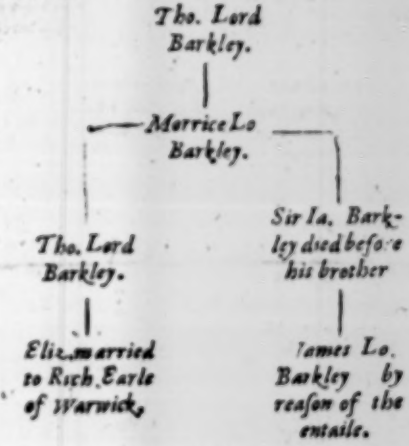
Thomas


Thomas Beauchampe Earl of Warwick.
Guy de Beauchampe first son, obiit ante patrem, 30.E.3.
William Beauchampde BeauchampL. of Aberganny obiit 12.H.4.
Tho. de Beauchampe Earle of Warwicke, by reason of the entail, obiit anno 1.H.4.
Richard deBeauchamp Earl of Warwicke, obiit 9. H 5.
Elizabeth.
Katharine lived in 21. R.2.
Rich. Beauchamp Earl of Warwick obiit 17.H.6.
Richard

Richard Earle of Arundell, by a fine, 21. *E.* 3. entailed the Castle, Towne, and Mannor of Arundell, with other Lands, to him, and to his heires Males, begotten of the body of *Ellenor* his wife. By vertue of which entaile *John* Lord *Matravers*, Earle of Arundell, after the decease of *Thomas* then Earle, which died without heire Male, although the sisters of the said *Thomas* possessed divers Lands and honors, of the which the said *Thomas* died seised in Fee simple, was Earle of Arundell.



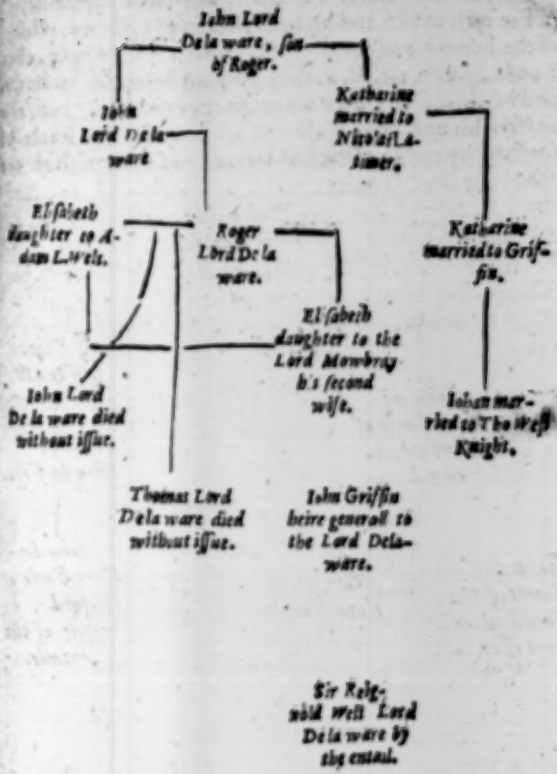
Thomas Lord *Barkley* was seised in his demesne as of fee of the Castle of *Barkley*, and Mannour, &c. and a fine levied in the Kings Court 23 *E.* 3. of the aforesaid Castle, Mannour, &c. to him for terme of his life, remainder to *Morrice* his sonne, and to the heires males of his body issuing, with other remainders as aforesaid: the which said *Morrice* had issue *Thomas* Lord *Barkley*, and *James Barkley* Knight; which *James* dyed in the life of his brother, leaving *James* his sonne and heire living. After, the said *Thomas* Lord *Barkley* died *Anno* 5. *H.* 5. leaving *Elizabeth* his daughter and heir married to *Richard* Earle of Warwick; after whose death *James* his Nephew on the brothers side entred into the Lands, Castles, and rem' aforesaid, by virtue of the entaile, and was summoned among the Barons to the Parliament, as Baron of *Barkley* 9. *H.* 5. which *Elizabeth* died in 1. *H.* 6.



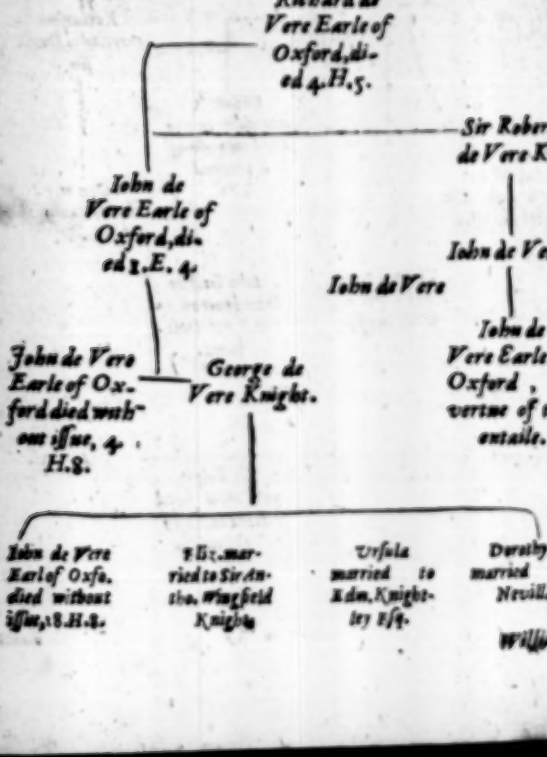
Thomas

Thomas Lord *De la ware* died seised in his demesne as of fee taile, to himselfe and to the heires males of his body issuing, by reason of a fine levied in the time of his ancestors of the Barony *De la ware*, with divers other lands in other counties, and died 5 *H.6.* without heires of his body; and *Reignold West* Knight of the halfe blood was next heire, by reason of the entaile aforesaid, and was summoned to the Parliament, by the name of *Reignold* Lord *De la ware* Knight, although *Iohn Griffith* was heire generall of the aforesaid *Thomas De la ware*, being of the whole blood, as appeareth by the genealogie ensuing.

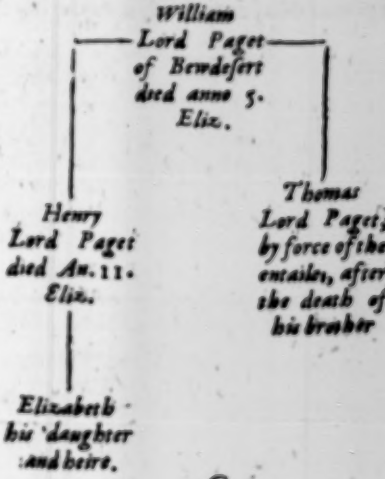
Iohn


Iohn Lord De la ware, son of Roger.
Iohn Lord De la ware
Katharine married to Nicolas Latimer.
Elisabeth daughter to Adam L. Wels.
Roger Lord De la ware.
Katharine married to Griffin.
Elisabeth daughter to the Lord Mowbray his second wife.
Iohn Lord De la ware died without issue.
Iohan married to The West Knight.
Thomas Lord De la ware died without issue.
Iohn Griffin heire generall to the Lord Delaware.
Sir Reignold West Lord De la ware by the entail.

John de Vere, Earle of Oxford, seised in his demesne, as of Fee taile to him and his heires Males of his body, issuing of the honour and county of Oxford, with divers other Lands, *Anno* 18. *H.* 8. died without heires of his body, and his three sisters were his next heires generall, but *John de Vere* his next heire Male, as appeareth, was Earle of Oxford, by reason of the said entaile, and none of the three sisters obtained Dignity.

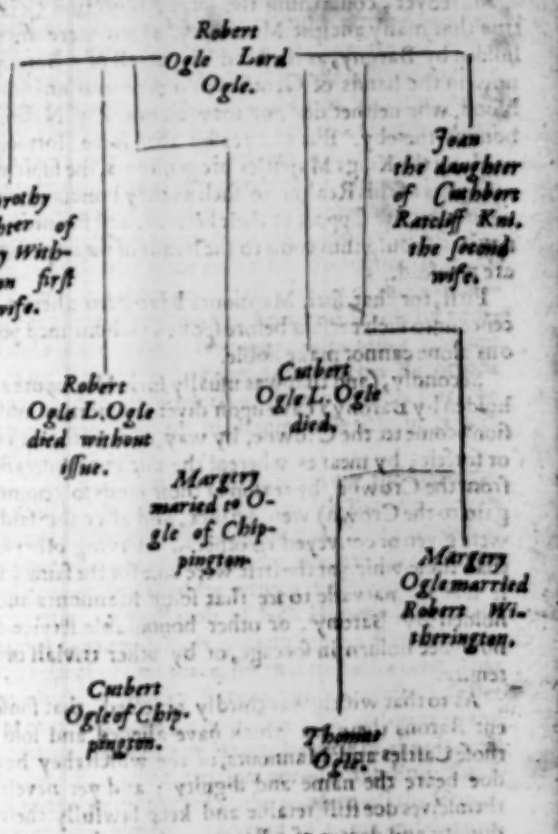


William Lord *Paget* of *Bewdesert* was seised in his demesn as of fee, of the Baronies of Langden and Hawood, and of, and in the Mannours of Bewdesert, Landen, &c. And being so seised, by fine *quinto Mariæ* entailed the Baronies and Mannours aforesaid to him and his heires males of his body issuing: And afterward *Anno* 5. *Eliz.* died, leaving *Henry* his sonne next heire male. Which *Henry* entred into the Baronies and land aforesaid, by vertue of the foresaid fine, and died thereof seised 11. *Eliz.* leaving *Elizabeth* his onely daughter and heire. After whose death *Thomas Paget*, brother and heire male of the said *Henry*, entred into the Baronies and Mannours aforesaid, and was summoned to the Parliament by virtue of the aforesaid fine.



Robert Lord *Ogle* entred into the Barony of Bothal and Ogle, with divers other Mannors and Lands in the County of Northumberland, by conveiance; which was to himselfe for terme of his life, the remainder to the heires male of his body begotten; and he took to his wife *Dorothy Witherington*, by whom he had issue *Robert Ogle* his eldest sonne, and *Margery* his daughter married *Gregory Ogle* of Chippington: And the said *Robert* the father, after the death of the said *Dorothy* his wife, took to his second wife *Ioane Ratcliffe*, by whom he had issue *Cuthert* his second sonne; and after died. After whose death *Robert* the sonne was Lord *Ogle*, from whom the same descended to *Cuthert*, being brother of the halfe blood, by vertue of the said entaile, and not to the said *Margery*, nor unto her heires, being of the whole blood unto the said *Robert* the sonne.

Robert


Robert Ogle Lord Ogle.
Dorothy daughter of Henry Withrington first wife.
Joan the daughter of Cuthbert Ratcliff Knt. the second wife.
Robert Ogle L. Ogle died without issue.
Cuthbert Ogle L. Ogle died.
Margery maried to Ogle of Chippington.
Margery Ogle married Robert Witherington.
Cuthert Ogle of Chippington.
Thomas Ogle.

Moreover, concerning the second objection, it is very true that many ancient Mannours, which were anciently holden by Barony, as the head or parcell of a Barony, are now in the hands of Gentlemen meane and un-noble by blood, who neither doe nor may claime any Nobility or honour thereby. But the reason that some former gifts made by the Kings Majesties progenitours, the supreme Sowetaignes of this Realme, to such as they honoured, in augmentation and support of their honour, and by honourable services, should thus come to the hands of meane personages, are twofold.

First, for that such Mannours have been aliened by licence unto such persons before spoken, whom such possessions alone cannot make noble.

Secondly, (and that was usually such Mannours as were holden by Barony) have upon divers encheasons and occasions come to the Crowne, by way of revertor, or eschete, or forfeit, by meanes whereof the ancient tenures derived from the Crowne (by reason of those lands so comming again to the Crown) were extinct, and after the said lands were given or conveyed to others, reserving other services than those which at the first were due for the same; so that it was no marvaile to see that some Mannours anciently holden by Barony, or other honourable service should now bee holden in soccage, or by other triviall or meane tenure.

As to that which was thirdly objected, that some ancient Barons there are which have aliened and sold away those Castles and Mannours, of the which they have and doe beare the name and dignity; and yet nevertheless themselves doe still retaine and keep lawfully their estate, dignity and degree of a Baron, and have been and are called

led to the Parliament, such alienation notwithstanding. To this I answer, That it is true, but it proveth nothing against the former resolution: And therefore for better satisfaction of this observation, it is to be considered, that such Barons either be originally Barons by writ, or Barons by tenure. Barons by writ (in this respect now in hand) are of two kindes; For either in such writ, whereby they or their Ancestors were at first summoned, they were named onely by their owne names; or else there was addition given them of the principall place of their aboad; which was done either for distinction sake, to sever them from some honourable person of the same surname; or else to give them such honourable title by addition of the place, which place notwithstanding was not holden by Barony: And therefore if such a Baron doe alien away that place which anciently was his seat, he may nevertheless retain his honourable title, in respect had of such a place.

But if a Baron by tenure doe alien away the honourable Castle, or Mannour holden by Barony, unto a mean person, not capable of honour, and that by sufficient licence so to doe, and after the alienour which made such alienation be called by writ to the Parliament, under the title, or as Baron of such Honour, Castle, or Mannour so aliened, he is not any more a Baron by tenure in respect of that place, for that he hath aliened that away which he held by Barony; but thenceforth, after such writ of summons, he is become a Baron by writ, and may retaine the name of Baron by title of the place, as Baron by writ, such alienation notwithstanding; forasmuch as the writ directed at the pleasure of the Prince, doth give unto him that addition of name and dignity.

And thus much touching the resolution of the said question, and satisfaction of the said objections, and of Barons by tenure.

BARONS by writ, which is the second kind of Barons mentioned in the former Divisions of BARONS.

A Baron by writ is he, unto whom a writ of summons (in the name of the King) is directed, to come to the Parliament, appointed at a certaine time and place to be holden; and there, with his Highnesse, the Prelates, Nobility, and Peeres, to treat and advise touching the waighty affairs of the Realme: The forme of which writ is much to the effect of the writ before mentioned in the title of Earle; which kind of writ is as well directed to the Barons by tenure, as Barons by creation, Patent, or otherwise. But those which are not Barons by tenure, nor by Patent, and have onely such writs, are therefore called Barons by writ; and upon receipt of such writ, and place taken accordingly in Parliament, ought to enjoy the name, dignity, and honour of a Baron.

Touching the antiquity of Barons by writ onely, and their first institution, I finde little or no mention before the time of *H.*3. And therefore I conceive that either the

the firſt of all, or at leaſt that the firſt frequent uſe of ſuch Barons was had and deviſed 49. *H.* 3. in caſe of neceſſity, and upon a lamentable occaſion. For in the diſcord between the King and his Nobility, in thoſe troubleſome warres, ſeditions, and rebellions, which they moved againſt the ſaid King, there were many cruell battells fought, to the great effuſion of Engliſh blood: of which rebellions *Simon* Earl of Leiceſter was ring-leader, for the defence of liberties (as they pretended) granted by *Magna Charta*, and the Charter of the Forreſt, which are even to this day the principall grounds of the poſitive Lawes, and are the moſt ancient ſtatutes in uſe within this Realme, and for defence of other conſtitutions and ordinances then made at Oxford: And after divers fields fought by them at Northampton, Rocheſter, Lewis, and other places; laſt of all was the cataſtrophe of that tragedy finiſhed at Eveſham, where the ſaid Earle of Leiceſter was ſlain, the King had the victory, and the rebellious Barons had the overthrow; whereupon preſently enſued the Parliament holden at Wincheſter, and after at Weſtminſter, where ſuch of the Barons as were ſlaine in the field againſt the King, and ſuch others of them alſo as were taken captive, and were fled, were to be attainted and diſinherited of their livings: wherefore for as much as the number of Barons who had continued faithfull unto the King, was ſmall (who were the Peeres upon whoſe tryall then theſe things were to be accompliſhed) it was holden a neceſſary policy to ſupply the number of the diminiſhed Barons, and to fill up their rooms in Parliament with other wiſe and fit men, of the beſt account and livelihood, upon ſummons by writ: By reaſon whereof at thoſe Parliaments were called the Abbots and

and Priors of the Realme, as well those that held not by Barony, as others: and divers others of the most worthy of the Laity not holding by Barony: And these by means thereof were thenceforth Barons by writ. But certain of the said Abbots and Priors, which held not by Barony, and thought it a burthen to their houses, got themselves upon petition afterward to be exempt, as by divers records thereof remaining in the Chancery may appeare.

This moreover is to be noted concerning the writ of summons to the Parliament, that these writs in forme of their direction are diverse. Some directed by speciall name of Barons: as, *Rex, &c. Edmundo Baroni de Staffort; Johanni Baroni de Greystock; Johanni Baroni Dudley.* Some others by the name of the party, with addition of the place; as, *Johanni Stronning de Knocking Militi; Edmundo Grey de Ruthin Militi; Edvardo Grey de Grooby Militi; Johanni le Scroop de Masham Militi; Willihelmo Zouch de Harrington Militi*; naming the chiefe Castle or Mannour of such Baron, which alway standeth afterward for the head place of the Barony: wherefore the said Baron and his heires shall be sirnamed and called, and shall continue that name of place, although he doe alien away the same, as before is said. Some others are named in this manner, with the title of Lord; as, *Johanni Beauchamp Domino Clinton, Henrico Piercy Domino de Poynings.* To some others the said writ is directed onely by their name, without any addition of place or dignity; as, *Willihelmo de Lovell Militi, Tho de Scales Militi, Willihelmo Devereux Militi.* See *Tho. Mills* Nobility Politicall and Civill.

But the nature, quality, and condition of these Barons by writ is aptly discovered by the debate of a question often

ten moved among men, and spoken of concerning the descent and continuance of a Barony by writ: which question for the more orderly disposition thereof, I doe divide into these articles or points.

Question.

First, whether a Barony by writ may descend from the Ancestor to the heire, or not?

Secondly, admit such a Barony may descend, then whether it do descend to the heire female or not, if there be heires male, though not so neare as the females.

Thirdly, admit it doe descend to the heires females, then whether may the husband of such heire female take upon him the name, stile, and dignity of such Barony *in jure uxoris*, or not?

As touching the first question, it shall be requisite for the more satisfaction of all men to alledge such principall reasons as are wont to be produced on both parts.

Those therefore that maintaine the negative part, denying that such Barony should descend, do strengthen themselves with these or the like arguments, *viz.*

Nobility and honour, which are given in respect of wisedome, counsell, and advice, being gifts of God to the person of a man, cannot extend to any other person, or descend from one man to another: for it is a rule of the law of reason, *Quod privilegium personale personam sequitur, & extinguitur ad personam*: But such is the dignity of a Baron by writ: Therefore it is reason that it should not descend from the Ancestor to the heire.

Againe, if the calling to Parliament by writ bee the efficient instrumentall cause of such Nobility to the Ancestor, the not calling of the heire is the losse of that Nobility,

Nobility; for if the heire have defects of nature in him, as Idiocy, Frenzy, Leprosie, and such like, whereby he is unfit for counsell and conversation, by what reason should he enjoy that dignity whereof he is either unworthy, or uncapable: for the effect hath no place where the cause doth faile. And hereof they doe conclude that such dignities of Baronies by writ should not descend.

Of the contrary part the affirmative part is proved thus, *viz.* Honour which is given in respect of the wisdome and vertue of him upon whom it was first bestowed, is not onely a due recompence for himselfe while he liveth, but also a memorable reward thereof in his Posterity. The words of *Cicero* to this effect are most excellent, *Hominis boni semper Nobilitati favemus, & quia utile est resp. esse & homines dignos majoribus suis, & quia valere debet apud nos clares hujusmodi senes fuisse, ne resp. moriretur memoria etiam mortuor, honor.* Therefore this kinde of honour is patrimoniall and hereditary, for things which are once granted to a man by the King for his honour, are not againe to be returned, either to his losse and discharge, or to his heires.

Secondly, if the infamy of the Ancestor be a blot to the Posterity, as affirmeth the wise man, *The children complain of an ungodly father, because they are reproved for his sake:* And for that also the Law of the Realme doth corrupt the bloud of the Posterity by and upon the offense of Ancestor, reason would also that the honour due to the Ancestour should be likewise honour to the posterity: for contraries do carry also their contrary reasons.

For the determination whereof it is to be noted, that diversity of reason hath bred diversity of opinion.

Some men there are that think that the dignity of a Baron

ron by writ is not descendable from the Ancestor to the heire, unlesse the heire be likewise so called by writ to the Parliament, and that then it becommeth an inheritance, and not before.

But this objection is repugnant to the nature of a descent, which (for the most part) doth carry the patrimony descendable by act in law, presently upon the death of the Ancestor unto the heire, or not at all. Wherefore the custome of our countrey, and manifold presidents doe prove, that this kind of Barony doth descend from the Ancestors to the heire, and there needs not any words of heirs in the writ of summons. Onely one president there is in a speciall writ, sometimes directed to Sir *Henry Bromsted* in 47. *H.6.* wherein he was stiled Lord *Veysey*; wherein there are these words inserted, *Volumus tamen vos & heredes vestros masculos de corpore vestro legitimè procreatos exeuntes, Barones de Veysey existere*, which is to bee read in *Co.7. part.* 33. *b.*

Wherefore as it is true, that where the heire of any such Baron by writ is called to the Parliament, that his descent of honour is thereby established and approved by the gracious judgment of our sacred Soveraigne; so it is also true that if it shall stand with his Highnesse pleasure that such heire shall not be summoned at all, (for none can come to so high a Councel unlesse he be called) then that Nobility is much empaired, and in a manner extinguished, in the censure of all men; for that it had none other originall but by writ of summons, from the which in the judgment of the supreme soveraign he is excluded.

As to the second principall point, whether the Barony by writ may descend to the heires females, it shall not be

be amisse likewise to view the reasons of either part, and by conflict of argument the truth may the better be discerned.

Those that maintain the affirmative part do reason after this manner: In reason the sexe of the heire female ought no more to bar her of the dignity, than the nonage of the heire male ought to bar him, although during his nonage he be unable to do the service; but as the service of the one is forborne for a time, so the sexe of the other may at all times be supplied by the maturity and sufficiency of her husband.

Offices of honour which do much import the publique weale, being passed by inheritance, do descend to the heire female, if there be no nearer heire male. As the office of the high Constableship of England, which descended to the daughters of *Humphrey de Bohun* Earle of Hereford and Essex, a memoriall whereof is in *Dyer* 285. but more at large in *Keilway* 6. *H.* 8.

Also the office of Lord-Steward descended to *Blanch* daughter to *H.* Earle of Lancaster: the like may be said of the office of Earle Marshall, which descended by an heire female unto the house of Norfolk; all which offices are unfit to be exercised by a woman, as it is unfit for a woman to be summoned to the Parliament as a Baroness by writ. And many noble houses in England do support the dignity of Baronage unto them descended by women.

They which stand on the negative part of this controversie, do encounter their adversaries on this manner, *viz.* The writ of summons to the Parliament, whereby the Baron by writ hath his originall, is to call that honourable and worthy person so summoned to be one of the number of that right high and honourable Assembly, and to be a

Judge

Judge to sit, heare, and determine life and member, plea and right of land, if there shall come occasion; likewise to give counsell and advice in the most weighty affaires of the Realme. But these things are convenient for the quality of men, unfitting and altogether unbeseeming the sexe of women: *Ergo*, having respect unto the finall purpose of such writs, such inheritances should only descend unto the heire male, and not unto the heire female.

Secondly, if it shall be answered, that although the heire female to whom such inheritance is descended, be unfit in her owne person for the accomplishing of these things, yet she may marry with one sufficiently able, for her, and in her behalf, to execute the same: this answer will neither satisfie nor salve the inconveniences. For admit that such heire female were at full age at the death of her Ancestor, unmarried, it doth lie in her own choice who shall be her husband; so shall the pleasure of the Soveraigne in the choice of his Councell, in the great causes of the Realme, be subject to the will of his subject in the choice of her husband, which were altogether inconvenient.

Thirdly, if such husband shall be called in the right of his wife, the writ should make some mention hereof: for otherwise it may well be taken that the husband was chosen in his own person, and in behalfe of himselfe, and not in regard of his wife, or such pretended dignity descended unto him: But there was never such writ of summons seen wherein the wife was mentioned; and if the husband of such wife have been called to the Parliament, which is alwayes by generall writ, not mentioning his wife, he is now made thereby a Baron of himself, and in his own right, by that writ.

Having

Having thus heard both sides speak, place doth now require to interpose opinion to compound this controversie.

This question or point is somewhat perplexed, by means of difficult presidents: for first, it is observed that some presidents do prove that Baronies by writs have descended unto heires females, whose husbands have beene called to the Parliament, whether in regard of themselves, or in regard of their wives it matters not. But sure it is, that the marriage of such Ladies gave them occasion so to be summoned; and such husbands and their posterity have and do lawfully beare the same name of dignity, which the Ancestors of such wife did before rightfully beare: For by this controversie there is no purpose to call the right of such noble houses into question. Howbeit, secondly, this is to be observed out of the presidents, and to be acknowledged of every dutifull subject, that the Kings Majesty is nevertheless at liberty to call to the high Councell of Parliament, whom his Highnesse shall in his Princely wisdom think most meet: which his Majesties Progenitors have in former ages observed.

And therefore whereas *Radulph* Lord *Cromwell* being a Baron by writ died without issue, having two sisters and coheirs; *Eliz.* the eldest married to Sir *Tho. Nevil* Knight, and *Joan* the younger married Sir *Hunt Bourcher*, he who had married the younger sister was called to the Parliament as L. *Cromwell*, and not the said Sir *Tho. Nevill*, who had married the elder sister. 3. It is to be observed, that if a Baron by writ die without heire male, having his daughter, sister, or other collaterall heire male, that doth or can challenge the lands of the said Baron deceased, by any ancient entaile or otherwise, the title of such

such heire female hath bin heretofore allowed as by the honourable opinions and relations of the right honourable the late Commissioners in the office of Earle Marshall, signified unto the late Queene, upon the Petition of the sister and heire of *Gregory*, late Lord *Dacres* deceased, may appeare.

Moreover, in the same Pedegree of the said Lord *Dacres* it is expressed, that *Thomas*, sometimes Lord *Dacres*, had issue *Thomas* his eldest son, *Ralph* his second sonne, and *Humphrey* his third sonne. *Thomas* the eldest, dyed in the life time of his Father, having Issue *Ioan* his daughter and heire, who was marryed unto Sir *Richard Fines* Knight. And after *Thomas* Lord *Dacres* her Grandfather, and Father unto the said Sir *Ralph* and *Humphrey* dyed. After whose death, *Henry* 6. by his Letters Patents, bearing date at *Westminster*, 7. *Novem. Anno* 7. *regni*, reciting the said Pedegree, and Marriage, doth by his Letters Pattents accept, declare, and reputt the said *Richard Fines* to be Lord *Dacres*, and one of the Barons of his Realme. But afterward in the time of *Edw.* 4. the said *Humphrey Dacres* after the attaindor of the said *Ralph*, and himselfe by an Act of Parliament, which was in 1. *Ed.* 4. and after the death of the said *Ralph*, and after the reversall of the same Act, by another Act, 12. *Edw.* 4. the said *Humphrey* made challenge unto the said Barony, and to divers Lands of the said *Thomas* his Father; whereupon both parties after their title had been considered in Parliament, submitted themselves unto the Arbitrement of King *Edw.* 4. and entred into Bond each to other for the performance thereof. Wherupon the

said King in his award under his Privie seale, bearing date at *Westminster*, 8. *April. Anno regni* 13. did award, that the said *Rich: Fines* in the right of *Ioan* his wife, and the Heires of his body lawfully begotten, should be reputed, had, named and called, Lord *Dacres*, and that the said *Richard Fines*, and the Heires of his body by the said *Ioane* begotten, should keepe, have, and use the same state and place in every Parliament, as the said *Thomas Dacres* Knight, late Lord *Dacres* had used, & kept, &c. that the heires of the body of the said *Thomas Dacres* Knight, late Lord *Dacres*, lawfully begotten, should have and hold to them & their Heires, the Mannor of *Holbech*, And furthermore the said King did award on the other part, that the said *Humphrey Dacres* Knight, and the Heires males of the said *Thomas* late Lord *Dacres*, should be reputed, had, named, and called the L. *Dacres* of *Gillesland*: And that he and the heires males of the said *Thomas* then late Lord *Dacres*, should have use, and keepe the place in Parliament next adioyning beneath the said place, which the said *Rich: Fines* Knight, Lord *Dacres* then had and occupied, and that the heires of the body of the said *Ioan* his wife should have and occupie. And that the Heires males of the said *Thomas Dacres*, late L. *Dacres* should have to them & to the heires males of their bodies begotten, the Mannor of *Iothington*, &c. And so note that the name of the ancient Barony, namely *Gilesland*, remained unto the Heire male, unto whom the land was entailed. Moreover, this is specially observed, if any Baron by writ doe dy, having none other issue then Female, and that by some speciall entail or other assurance

assurance there be an heire male which doth enioy all, or a great part of the lands, possessions, and inheritances of such Barons deceased, the Kings of this Realme have used to call to the Parliament by writ as Baron such heire male, omitting the Husband or issue male of such heire female, and this also appeareth by a notable controversie in the time of *Henry* 7. betweene Sir *Robert Willoughby* Lord *Brooke*, and *Richard* Lord *Latimer*, for the Barony of *Latimer* which in effect was: The said Lord *Brooke* did challenge the Barony of *Latimer*, as cosen and Heire to *Elizabeth* his great grandmother who was sister and heire to *Iohn Nevill*, Lord *Latimer*, who died without issue and hereupon exhibited a Petition to *Henry* 7. in Parliament, whereto *Richard* then Lord *Latimer* was called to answer, because he then enioyed the said title and dignity; The said *Richard* Lord *Latimer*, by his answer did shew that it was true that after the death of the said *Iohn Nevill*. Lord *Latimer* dying without issue, the said *Elizabeth* was the sister and next heire, and married unto Sir *Thomas Willoughby* Knight, second son of the Lord *Willoughby*, but *Henry* 6. for that the said *Iohn Nevill* was dead without issue, and that the next heire was female, did therefore call to the Parliament, *George Nevill* Knight second son of *Ralph* Earle of *Westmerland* to be Lord *Latimer*, as Cozen and next heire male of the said *Iohn Nevil* Lord *Latimer*, which *George* was grandfather of the said *Richard* Lord *Latimer*, namely Father of *Henry* Lord *Latimer*, Father of the said *Richard*, In debate of

which cause, the question now in hand whether a Barony by writ may discend unto the heires females, was advisedly considered of by the said King and his Nobility in Parliament, and in the end adjudged with the said *Richard* Lord *Latimer*: which President doth afford us two Iudgements in this point, one in the time of *Hen.6.* when the writ was directed to the said Sir *George Nevill*, whereby he was summoned as Lord *Latimer* to the Parliament, and as heire Male, and not the said Sir *Thomas Willoughby* Knight, husband of the said *Eliza.* heire male: And the second judgement was given in the time of *Henry* 7. whereby the Barony was adiudged vnto the said *Richard* Lord *Latimer* comming of the speciall heire male, against the said Lord *Brooke* descended of the generall heire male.

But here the President before remembred of the Barony of *Dacres* may be objected to incounter this confusion: For there was an heire female married unto Sir *Richard Fines* who by the declaration of *Hen.6.* was Baron of *Dacres* in the right of his wife, and there was also *Ralph* and *Humfrey* the heires males, before whom the heire female was preferred by the censure of *Henry* 6. and *Edward* 4.

This objection is easily answered. For although *Hen.6.* through the Princely favour which hee bare unto Sir *Richard Fines* had declared him to bee Lord *Dacres* in the right of his wife, yet notwithstanding did *Ralph Dacres* being heire male unto the then Lord *Dacres* deceased, beare also the name of L. *Dacres*, and by that name was attainted in Parli-

ament

ament. Wherefore the reason why the heire male could not bee regarded was the said attainder of the said *Ralph* and *Humfrey* his brother, and therefore when *Humphrey* 12. *Edw.* 4. laboured to have the said attainder reversed, he submitted himselfe vnto the Arbitrament of the King, who to satisfie both Competitors, because both had well deserved of him, after he had admitted them to his favour he allowed the one to be Lord *Dacres*, the other to be Lord *Dacres* of *Gilleſland*; & thus much concerning the second point, whether a Barony by writ may discend unto the heire female or not.

As concerning the third point, admitting such discent to bee to the heire female, when there is no heire male at all that may claime the same, for then doth this question take place, whether the husband of such heire female shall enioy the dignitie in the right of his wife or no; wherein wee are to rest upon a resolution had and given in this speciall question which was in this manner.

In the time of *Hen.* 8. when Mr. *Wimbis* tooke upon him the stile of Lord *Talboys* in the right of his wife, having none issue by her, the said King assisted both by Civill and Temporall Lawyers gave sentence, that no husband of Baroneſſe in her right should use the stile and dignitie until he had by her a Child, whereby he should become Tenant by the courteſie unto her inheritance.

The speciall reasons that occasioned this sentence were two: First it should be inconvenient for her husband this day to bee a Baron and Peere of the Realme, and to morrow by the death of his wife

to become none, and that without the death of the partie.

Secondly, if he had issue by his wife and were inricaled to be Tenant, by the curtesie of *England* of the wives land; if he shall not also beare the stile and dignity of her Barony, then should his sonne after the death of his mother dying in the life time of his father be Baron and Lord without land, for so the Father should have the land as Tenant by the curtesie, and the sonne the Lordship without land. And thus much said concerning the nature, quality, and estate of a Baron by writ, and for resolution of the severall points and Articles of the question proposed may suffice.

Barons by Patent, which is the third kind of Barons, mentioned in the former division of Barons.

THere is also a fourth meanes of creation by act of Parliament, but the first 2. mentiond, and this by Patent are most for the honour of the King, for thereby the donation doth proceed from his highnes onely, as from the fountaine of all honour and dignity, but when the creation is by Parliament, every one may bee said donator, *Cookes* 8. *part.* 39.

A Baron by creation, by reason of Letters Patents, is that Noble person whom the Kings Majesty, or any of his progenitors, Kings of the Realm, have

have created Barons by such their Letters Patents, But this manner of creating Barons by Patent, began in the Raign of *R.* 2. who created first *John Beauchamp of Holt*, Baron of *Kidderminster* by his Letters Patents, 8. *October, anno* 11. But *Mels* saith in 30. *H.* 6. this was brought in.

This kind of dignity of Baron, shall bee of such countenance in discent, or otherwise as shall bee limited in the *Habendi* in such Letters Patents contained, for it may bee but for the life of him, to whom it is giten, or for terme *de auter vie*, of some other mans life, as some hold opinion, in 9. *H.* 6. 29. for *Cuius estate, viuest disponere*, it may be in speciall a generall taile, and this kind of estate tayle, was usuall before the Statute made 13. *E.* 1. by which estate taile in Lands and Tenements was created, as appeareth by the Patent, whereby *Hubert de Burgo* was made Earle of *Kent*, in the time of *H.* 3. by these words, *Habend' sibi & hered' suis de corpore Margaretæ uxoris sua sororis Alexandri Regis Scotiæ procreatis & pro defectu talis exitus, remanere rectis heredibus dicti Huberti*, and that estates in taile are at this day titles of honour by the Statute of *Westm.* 2. *vide Nevils* cale *Cooks* 7. *part.* 33. For the better explanation of this kind of dignity, the resolution also of certaine questions shall be very requisite.

Question.

If a Nobleman, and his Progenitors have for a long time been called to the Parliament, and be a Baron, either by tenure or writ, & have had in regard thereof a place certaine in Parliament, if afterwards the same

Nobleman should be created a Baron of that Barony, and by the same name by Letters Patents, whether shall hee and his heires retaine his old place in Parliament, which hee had according to the former dignity, or whether shall he lose his old place, and take a new place, according to the time of his creation onely.

Answer.

Cook 11. part. the Lord de la ware's case.

The case of the Lord *Delaware* received a resolution somewhat answerable to this question. *Tho.* Lord *Delaware* 3. *E.6.* being in some displeasure with *William West* his Nephew, and heire, who was Father to the now Lord *De la ware*, procured an Act of Parliament, by the which the said *William West* was during his naturall life only clearly disabled to claime, demand, or have any manner of right, title, or interest by discent, revenue, or otherwise, in, or to the mannor, lands, tenements, or hereditaments, title and dignity of *Thomas* Lord *De la ware*, his Vnkle: After the said *Thomas De la ware* dyed, and the said *William West* was in the time of the late Queene *Elizabeth* restored, and afterwards in the 8. yeare of her Raigne, was created Lord *De la ware* by Patent, and had place in Parliament, according to his creation by Patent, for that by the said Act of Parliament, in the time of *E.6.* hee was excluded to challenge the former ancient Barony, and after hee dyed, whether the new Lord *De la ware* should take his place to the ancient Barony by writ, or according to his Fathers creation by Patent, was the question, the opinion of the late Queenes Counsell, being Her Majesties Attorney Generall, and

ted Sollicitor, were that the acceptance of the new creation by the said *William West*, could not distinguish the ancient dignity in him at the time of his creation, but the dignity was at that time by the Act of Parliament, 3. *Ed.* 6. in obeysance, suspence, or consideration of Law, and he thereby utterly disabled to have the same during his life onely: so as other acceptance could not extinguish that dignity, which he then had not, nor could not conclude his heire, who was not disabled by the said act of 3. *Ed.* 6. to claime the ancient Barony: which opinion of theirs was seene and allowed by the resolution, of the chiefe Iustice of *England* and Lord chiefe Baron, and so signified unto the Lord Keeper: but this is to be noted by the reasons made for the said resolution, that if the said *William West* had beene Baron, and intituled, or in possession of the ancient dignity, when hee accepted the said creation, the Law perchance might have been otherwise, but that remaineth as yet unresolved: nevertheless the rule *eodem modo quo quid constituitur dissolvitur*, but by grant which is made a matter in fact, a man cannot transferre his title of honour, *Cooke* 7. *part.*

And thus much concerning the three degrees of Barons within this Realme, may suffice to be said in generall upon this occasion, for the better understanding and direction of that which followeth to be handled.

And in this place I thinke it not impertinent to mention one case, which I read in the bookes of the common Law, concerning the discent of a title of honour, whereof the Ancestor had estate in fee simple.

There is a maxime in the Law, *Possessio fratris de feodo*

feoda simplici facit' sororem esse heredem, the possession of the brother in fee simple doth make his sister to be his heire. But if a man by any of the three names before mentioned be created into a title of dignity to him and to his heires for ever, and he hath issue a sonne, and a daughter by one Venter, and hath also a sonne by a second wife, afterwards the Father dyeth, and his eldest sonne entreth into all his Fathers inheritance, and also enioyeth the title and name of dignity, which his Father had, but dyeth without issue.

In this case the dignity shal goe and descend unto the younger sonne, though he be but of the halfe blood unto him, that last enioyed that name and title by discent, and shall not descend unto his sister of the whole blood: and yet in this case shee should only bee her brothers heire of all his fee simple Lands, and the reason and cause hereof, is because *Possessio fratris*, because the possession of the brother is the maine and sole cause, which may give title to her his sister, which faileth in this cause of dignity: For it cannot be said, that her eldest brother was in possession of his title of honour no more then of his blood: For the dignity was inherent to his blood, so that neither by his owne Act neither by any act to be done by another, did hee gaine any more actuall possession (if so it may be termed) then by the law did descend unto him, and therefore the younger brother may well by the Law make himselfe heire unto his Father of the honour, though he cannot bee heire unto his brother, so that this word (*Possessio*) which is none other then *pedis positio*, a fixing of the foot, extendeth only unto such things, of which a man may (by his entry or other act)

and doth require actuall possession, *Cooks 3. part. Ratcliffs case.*

And having thus much dilated concerning the creations, and other things incident to the degrees of Nobility: I cannot with silence pretermit something to declare concerning that sufficiency and ability of estate which the Law doth require to be in every of them, according to their severall dignities.

The Common Law that alwayes will, that decorum and conveniency be observed, considering the charges and expences appertaining to these degrees and dignities, being offices of principall service to the King and the Realme, both in time of warre and peace (as hath beene said) hath ordered that each of them have a convenient portion, and value of lands of inheritance for the support of their honours, which supplyes are as sinewes conjoyned unto the same: For in vertue and in riches (as *Aristotle* counselleth) all the old Nobility consisted, and which two as *Ecclesiastes* teacheth) maketh a good accomplement: for saith he, *Vtilior est sapientia cum divitiis conjuncta. Lamberts* Perambulation of *Kent*, 368.

Therefore a Knight ought to have 20.l. land by the yeare, a Baron 13. Knights fees and a quarter, an Earle 20 knights fees: and this doth appeare by the Statute of *Magna Charta*, cap. 2. For alwaies the fourth part of such Revenues, which is by the Law requisite to the dignity, shall be paid to the King for reliefe: as for example: The reliefe of a Knight is five pound, which is the fourth part of 20.l. which is the revenue of a Knight: see the Statute hereof, 1 *E.* 2. and the reliefe of a Baron is a 100. markes, which is the fourth

part

part of his revenues; that is to say 400. marke yeare, which doth include 13. Knights fees, and quarter; and the relieſe of an Earle is a 100.l which is the fourth part of 400.l. which is the revenue of Earle: and it appeares by the Records of the Exchequ that the relieſe of a Duke amounteth unto 200.l by conſequence his revennue ought to be 800.l. *pr num*, and this is the reaſon in every of our bookes, t every of the Nobility is preſumed in our law, have ſufficient free-hold, *Ad ſuſtinendum nomen onus*, and to what value theſe ancient Rents in ti of *H.3.* & *Edw.1.* at this day doe amount unto, eve man knoweth not *Cooke, 7. part. 33.*

And in caſes of decay of Nobility, and meane, *Senatores Romani rere amotiſenata*, as ſenators of *Ro* were removed from the Senate: ſo ſometimes th are not admitted to the upper houſe in the Parliam though they keepe the name and title of dignity Sir *Thomas Smith de reipub. Angl.* 221. And by a St tute made 31. *H.8 ca.* 10. The Lords have their pl ces preſcribed after this manner following: *viz.* th foure, the Lord Chancellour, the Lord Treaſurer, t Lord Preſident of the Councell, and the Lord Priv Seale, being perſons of the degree of a Baron, or bove, and in the ſame act appointed to ſit in the Pa liamente: and all aſſemblies or Councell above all d ties, not being of the blood royall, *viz.* the Kings br ther, Vnkle, Nephew: and theſe ſixe the Lord Hi Chamberlaine of *England*, the Lord Marſhall, and t Lord *Admirall* of *England*, the Lord Steward of t Kings Houſe, and the Lord Chamberlaine of th Houſhold by that act to bee placed in all aſſemblies a

Counc

next after the Lord Privy Seale according to their degrees and estates, so that if hee bee a Baron, where he is to sit above all Barons, or an Earle aboue all Earles; and so likewise, the Kings Secretary being a Baron of the Parliament, hath a place above all Barons, and if hee bee a man of higher degree, hee shall sit and be placed according thereunto.

Priviledges incident to the Nobility according to the Lawes of England.

WHen a Peere of the Realme and Lord of the Parliament is to be arraigned upon any treason or fellony, whereof he is indicted, and whereupon he hath pleaded not guilty; the King by his Letters Patents, shall affigne some great and sage Lord of the Parliament to bee High Steward of *England*, for the day of his arraignment, who before the same day shall make precept to his Sergeant at armes, that is appointed to serve him during the time of his Commission to warne to appeare before him 18. or 20. Lords of the Parliament, or 12. at the least upon the same day; and then at the day appointed, when the High Steward shall bee set under the Clothe of State upon the arraignement of the Prisoner, and hath caused the Commission to bee read: the same Sergeant shall returne his Precepts, and thereupon, the Lords shall bee called, and when they have appeared and set in their places, the Constable of the Tower shall bee called to bring his Prisoner into the Court, who then shall

shall bring his Prisoner to the Barre, and the H
Steward shall declare unto the people, the cause, w
the King hath assembled thither those Lords and h
and perswade him to answere without feare,
then hee shall cause, the Clarke of the Crowne to r
his endictment unto him, and aske him, if hee
guilty or not, whereunto when hee hath answe
not guilty, the Clarke of the Crowne, shall aske h
how he will be tryed, and then hee will say by G
and his Peeres, and then the Kings Sergeants
Atturney, will give evidence against him, whe
unto when the Prisoner hath made answere,
Constable shall bee commanded to retire the Prison
from the Barre to some other place, while the Lo
doe secretly conferre in the Court together, and th
the Lords shall rise out of their places, and consi
amongst themselves, and what they affirme, shall be
done upon their Honour, without any oath to be m
nistred unto them; and when they all, or the gre
test part of them bee agreed, they shall returne t
their places and sit downe, and then the High St
ward shall aske of the youngest Lord by himself; if h
that is arraigned bee guilty or not of the offence
whereof hee is arraigned, and then of the younge
next him, and so of the residue one by one, untill he
have asked them all, and every Lord shall answer by
himselfe, and then the High Steward shall send fo
the Prisoner againe, who shall bee led to the Barre
to whom the High Steward shall rehearse the verdi
of the Peeres, and give judgement accordingly
Stamford Pleas del Corona, lib. 3. cap. 1, Pontus
188.

The

The antiquity of this kind of triall by the opinion of the last recited Authours is grounded from the Statute of *Magna charta* so called, not in regard of the quantity, but in regard of the weight thereof; *Cooke* Epistle to the 8. part, *fol.* 2. *c.* 29. beginning thus: *Nullus liber homo &c. nec super eum ibimus, nec super eum mittimus, nisi per legale judicium parvu' suorum.* But I take it to be more ancient, then the time of *Hen.* 3. as brought into the Realme with the Conquerour, being answerable to the *Norman* and *French* lawes, and agreeable with the Customes Fewdall, where almost all the controversies arising betweene the Soveraigne, and his vassall are tried *per judicium Parvu' suorum.*

And if a Peere of the Realme upon his arraignement of treason, doe stand mute, or will not answer directly, judgement shall bee given against him as a Traytour convicted, and he shall not bee pressed to death, and thereby save the forfeiture of his lands; for treason is out of the Statute of *Westminster*; the first *c.* 12 15. *E.* 4. 23. *Dyer* 205 and 300. But if hee bee arraigned upon an indictement of fellony, he may bee mute.

It appeareth by this Statute of *Magna charta*, that a Peere of the Realme shall be tried by his Peeres, onely in case where he is indicted at the Kings suite of treason or fellony; for the words of the Statute be, (We will not passe or sit in judgement upon him but by his Peeres:) But if an appeale of murder, or other fellony be sued by any Common person against a Peere of the Realme, hee shall bee tried by Common persons and not by his Peeres: *Stam. Pleas*

Pleas del Coron. lib. 3. cap. 1. Brooke triall 143. Poulton 188. 6. This priviledge hath some restraint as well in regard of the person, as in the manner of proceedings.

As touching the person; First, the Archbishops and Bishops of this Realme, though they bee Lords of the Parliament, if they bee impeached of such an offence, they shall not be tryed by the Peeres of the Realme but by a jury of Knights and other substantiall persons upon their oaths. the reasons thereof alledged is, for as much, as Archbishops and Bishops cannot passe in like cases upon the triall of any other of the Peeres, for that they are prohibited by the Common and Ecclesiasticall Lawes to bee Iudges of life and death, and reason would that the other Peeres should not trie them, for this triall should bee mutuall, for as much, as is performed upon their Honours without any oath taken.

And so by the way, you may see the great regard the Law hath to the word of a Peere of the Realme; when he speaketh upon his Honour, even in a cause concerning the life of a man, and that of a Peere; and therefore ought they much more to keepe their words and promises in smaller matters, when they engage their Honours for any fast cause or consideration. *Crompton Court.* 13.

Secondly, as touching the Persons no temporall Lords, but they that are Lords of the Parliament, shall have this kind of triall, and therefore, hereout are excluded, the eldest Sonne and Heire apparant of a Duke in the life of his Father, though he be called an Earle, and it was the case of *Henry Howard* Earle of

Surrey

Surrey, Sonne and Heir apparant of *Thomas Duke* of *Suffolke*, in 38. *H.* 8. which is in *Brookes* abridgement, treason; likewise the Son and Heir apparant of an Earl, though he be called Lord or Baron: And all the younger Sonnes of the Kings are Earles by birth, though they have no other creation, but shall not be partakers of this, or other priviledges incident to the Lords of the Parliament.

Thirdly, those that are Barons of the Nobility of *Ireland*, or of *Scotland*, if upon the like offence committed in *England*, they be apprehended in *England*, they shall not have their triall by Peeres, no though they were borne within *England*, for they received their dignity from a King of their Nations; But if the King of *England* at this day do create one of his subjects of *Scotland* to be Viscount *Rochester* within *England*, or by ordinary summons under his great Seale, doe call him to his upper House of Parliament, & do assign him a place, and to have a voice there in his great Councell, amongst the Lords and Peeres of the Realme, he shall thereby also be a Peere of the Realme, and be partaker with them in all priviledges; and thus much concerning the restraint of the said priviledges in respect of the person; as touching the manner of proceeding, it appeareth, by the said statute of *Magna charta c.* 29. that a Peere of the Realme shall be tried by his Peeres, only in case where he is indicted at the Kings suite of treason or fellony: for the words of the statute be, *Nec super eum ibimus*; But if an appeale of murder, or other fellony be sued by any Common person by a Peere of the Realme he shall be tried by Common persons and not by his Peeres, *Stam. Pleas, del Corone lib.* 3. *cap.* 1. *Poulton* 118. and so was *Fines* Lord *Dacres* tried in appeale of murder; 33. *H.* 8. *Brooke Abridgement* trials, 142.

The Nobility of this Realme enjoy that priviledge, that they are not to be impanelled in any Iury or Inquests, to make tryall, or Enquiry upon their corporall oathes betweene party and party; for they may have their writ for their discharge to the Sheriffe.

Rex &c. Vic' Cum' &c. quia barones regni nostri in Assizis Iuratis seu recognitionibus aliquibus poni non consueverunt ut dicunt nisi eorum sacramentum adesse necessarium quod sine illo veritas inquiri non potest: Tibi precipimus quod dilectum & fidelem nostrum, A.B. in Assizis Iuratis seu recognitionibus aliquibus non ponas seu poni facias contra voluntatem suam sine mandato nostro speciali, nisi suam presentia ob aliquam causam specialiter exigatur teste, &c.

But it is a rule in Law, *vigilantibus non dormientibus subveniunt Iura?* For if the Sheriffe have not received any such writ, and the Sheriffe have returned any Lords in Iuries, or in Assizes, &c. and they thereupon doe appeare, they shall be sworne, and if they doe not appeare, they shall loose their issues, 35. *H.* 6. 46. and in such case they must purchase a writ out of the Chancery, reciting their priviledge directed to the Iustices before whom such noble persons are so impannelled, commanding them to dismisse him or them, that were so impannelled out of the said pannell, *Fitz. na. br.* 165.

This priviledge hath restraint in two cases; first if the Enquiry concerne the King, and Common-wealth in any necessary or important degree, or busines of the Realme, then this priviledge is not allowed, nor taketh place; and therefore divers Barons of the marches of *Wales* were impannelled before the Bishop of *Ely*, and after Commissioners of *Oyer* and *Terminer* to enquire of a notable out-rage, committed by *Gilbert de Clare*, Earle of *Gloucester*, against *Humphery de Bohun*, Earle of *Hereford*, and *Essex*; and his Tennant in

Wales

Wales the 12th. yeare of *Ed.* 1. where *John de Hastings*, *Edmond de Mortimer*, *Theonald de Bordmor*, and others Barons of the Marches, challenged their Priviledges aforesaid, and much insisted upon the same, but it was afterwards answered by the Courts, as by the words in the Records appeareth; *Domino quod res ista Dom. Regem & Coronam & dignitatem suam tangit. dictum fuit Dominum Regis Johan. de Hastings, & omnibus aliis magnatibus super nominatis quod per statu & Iure Regni, & per conservatione dignitatis Corona & patris sui apponunt manum ad librum ad faciendum id quod eis ex parte Dom. Regis injungeretur.* The Barons aforesaid did nevertheless persist in the Challenge, and in the end both the said Earles between whom the said outrage had been perpetrated, submitted themselves to the Kings grace, and made their Fines.

Secondly, this Priviledge hath no place in case of necessity, where the truth of the case cannot otherwise come to light; for the words of the Writ in the Register before mentioned are *Nisi sua presentia ob aliquam causam specialiter exigatur. &c. Register.* 179. If a Nobleman doe bring an Action of debt upon an Accompt in case where the Party is to be examined, which is alwayes intended to be upon Oath, upon the truth of his cause by vertue of the Statute of 2. *H.* 4. *cap.* 8. It shall suffice to examine his Attorney and not himselfe upon Oath. 3. *H.* 6. 48. *Cooke* 6. *part* 53.

And this Priviledge the Law doth give to the Nobility, that they are not to be arrested by any Warrant of any Justice of the Peace for the peace, or for the good behaviour, nor by a supplicavit out of the Chancery so-

called, because it issueth out at the supplication of the partie, or from the Kings Bench, for such an opinion hath the Law conceived of the peaceable disposition of Noblemen, that it hath beene thought enough to take their promise upon Honour in that behalfe, *Lamb. Justice of Peace, lib. 2. cap. 2. Fol.* 17. *E.* 44. 24. *E.* 3. 33. *subpena, Fitz.* 20.

And as in civill causes, the like rule doth the Court of Equity observe in causes of conscience; for if the defendant be a Peere of the Realm in the Star-Chamber, or Court of Chancery, a Subpena shall not be awarded, but a Letter from the Lord Chancellor, or Lord Keeper, in liew thereof, and if he doe not appeare, no attachment shall go forth against him. For in the 14. Yeare of the late Queene *Eliz.* the Order and rule was declared in the Parliament Chamber, and so to be inrolled in the Parliament, that attachment is not to be awarded by Common Law, custome or president, against any Lord of the Parliament, *Dyer*, 315. *a.* and if he doe appeare, he may make his Answer to the Bill of complaint, upon his Honour onely, and is not compelable to be sworne.

By the Statute 5. *Eliz.* chap. 1. It is enacted, that all Knights, and Burgesses of the Parliament, shall take their Oath for the Supremacy, and so shall Citizens, and Barons of the Cinque-ports being returned of the Parliament, before they enter into the Parliament House, which Oath shall be according to the tenour, effect, and forme of the same Oath verbatim, which is, and

ſhd as it is already ſet forth to be taken in the Statute, *Eliz.* provided alwayes that for ſo much as the Queenes Majeſtie is otherwiſe ſufficiently aſſured of the faith and loyalty of the temporall Lords of her high Court of Parliament; Therefore this Act nor any thing therein contayned, ſhall not extend to compell any temporall perſon, of or above the degree of a Baron of this Realme, to take or Pronounce the Oath aboveſaid, nor to incurre any Penalty limited by this Act, for not taking or refuſing the ſame.

If any Peere of the Realme be ſued in the Common Pleas, in an Action of debt, or treſpaſſe, and Proceſſe are awarded againſt him by *Capias* or by *Exigent*, then he may ſue a *Certiorare* in the Chancery, directed to the Juſtices of the Common Pleas, teſtifying that he is a Peere of the Realme, and the Writ is thus.

Rex. &c. Iuſticiarijs ſuis de banco ſalutem, mandamus vobis quaſi G.F. miles eorum nobis ad ſectam alicujus per Actionem perſonalem in placitatus exiſtat. talem proceſſum & non alium verſus ipſum in actionem predicta ſcire faciat qualem verſus Dominos, magnates, Comites, ſeu Barones, Regni noſtri Anglium qui ad Parl. noſtra de ſuminicionem noſtra venire debent aut eorum aliquem ſecundum legem & conſuetudinem regnum noſtri Angl. fieri faciendum quia pred. G T. vnius Baronum Regnum in pred. ad Parliamentum, noſtri de ſuminicionem regia venient, record. & hoc vobis mandamus, & alijs quorum intereſt innateſcimus teſte eſt. Tito. H. N. B. fol. 247.

For unlesse the Court be judicially certified by the Kings Writ out of the Chancery, that the defendant is a Lord of the Parliament, If a *Capias* or *Exigent* issue forth against him no errour, neither is it punishable in the Sheriffes, his Bayliffes, or Officers, if they execute the said processe, and Arrest the body of the said Noble person, for it appertaineth not to them to argue or dispute the Authority of the Court, but if the Court be thereof certified in forme aforesaid, they will award a *Supersedeas* which is in the Booke of Enteries in the Title of Errour, *Sect.* 20. and there are two reasons or causes, wherefore no *Capias* or *Exigent* lyeth against any Peere, the one because of the dignity of their persons, the other by Intendment of Law, there is none of the Nobility but have sufficient Freehold which the Plaintiffe may extend for their payment or satisfaction, but a *Capias* or *Exigent* lyeth against a Knight, for the Law hath not that opinion of his Freehold, as the Court said in 26. *H.* 8. *vide* 27. *H.* 8. 22. in *Brookes abridgement Exigent*, 2. & 3. *Cooke* 6. *part* 52. & 54.

And if any of the Nobility happen to be so wilfull as not to appeare, the Court will compell the Sheriffe to returne great issues against him, and so at every default to increase and multiply the issues, as lately against the Earle of *Lincolne* hath been in practice.

By the Ancient Lawes of this Realme before the comming of *William* the Conquerour, many good Lawes were made for the keeping of the peace, amongst others that every man above the Age of 12. yeares should be sworne to the King, as you may read more at large in

Lambert

Lamberts perambulation of Kent, 21. which we in remembrance thereof doe keep at this day in view of Frank-pledge or leete Court; but Noblemen of all sorts are neither bound to attend the Leete, nor to take that Oath as appeares by *Britton cap.* 29. treating of this Court called the Sheriffes Turne Courts, of which the Leete seemes to be extracted and agreeable, thereunto is the Statute of *Marlbridge*, *cap.* 10. in these words, *le turnis vice contrà provisum est, quod necesse non habeant ubi venire Archiepiscopi, Episcopi, Abbates, Priores, Comittes, Barones, vide*, the Lord Chancellors Speech in the case of *Post-nati*, *fol.* 78.

If a Writ of Error be brought in Parliament upon a Judgement given in the Kings Bench, the Lords of the higher House alone without the Commons are to examine the errors, *vide Ibid. fol.* 22.

In 11. *H.* 4. 2. *b.* In a case concerning a distresse taken for expences and Fees of the Knights of the Parliament, it is agreed for Law that the Baronies and other Lands as are parcell of their ancient Lordships and Baronies, but for other Lands they are. But there is a question made, one which is no Barron, but ignoble doe purchase any ancient Barony, whether he shall be discharged of such ignoble purchase, by reason onely of such his purchase, challenge, or pretence to have Nobility and place in Parliament, as before in this treatise more at large appeareth; for as Lands by Villany service doe not make a Villany or Bondman, which being free doth purchase the same, as *Littleton* doth teach *lib.* 2.

cap. 12, though by his Tenure he shall be bound to doe such Villanie service, so of the other side, and that is holden by Barony, doth not make the villany peasent or ignoble which purchaseth the same, to be noble, although the charge of such tenure doe lye upon him in respect of the service of the Realme.

It is said in our Bookes, that a day of grace or by the favour of the Court is not to bee granted to the Plaintiffes in any Suite or Action wherein a Nobleman is defendant, 27. *H.* 8. 32. 27. *E.* 3. 88. becaufe thereby the Nobleman should be longer delayed then the Ordinary course of the Court is, and such Lord is to have expedition of Iustice in respect that he is to attend the Person of the King, and the Service of the Common-wealth, but if there be no ignoble person party to the Suite, the Judges doe and may at their discretions grant upon a motion and prayer, a day or more of tryall otherwise then by the strict course of the Law the Plaintiffe may challenge.

Cambden fol. 169. writing upon the Subject saith; where the Noble man is demandant the Tenant may not be essoyned; for the delay and causes aforesaid, to which I would also subscribe but that the Booke of 3. *H.* 4, 5, 6. is otherwise adjudged (if I doe misunderstand it) there the King brought a *Quare Impedit.* against a Common person, and the defendant was essoyned by the rule of the Court; Therefore *a fortiori*, he might be essoyned against a Nobleman.

It

If any Peere of the Realme, being a Lord of the parliament, be plaintiffe or demandant, defendant or Tenant, in any Action reall or personall, against another, whereupon an issue is to be tryed by a Jury, the Sheriffe must returne one Knight at the least, to be of the Inquest, otherwise upon a challenge made the whole Pannell shall be quashed, which by the order of the Law is appoynted to be done, for Honour and reverence due to the persons of that degree, for (as the words of the Booke are) when a Peere of the Realme is party, the Law is otherwise, then when the Suite is betweene other persons, *Fitz. Chall.* 113. 13. *E.* 3. *in a Quar. Impedit.* against a Bishop adjudged, *Plowd.* 117. *Dyer* 208. *b.* 27. *H.* 8. 22. *b.*

But the Earle of *Kent* by the name of *Reignald Gray* Esq. brought a Writ of Entry against Sir *H. G.* Knight, 4. *Eliz.* and the parties did plead to an issue, the *venire facias* was awarded, which the Sheriffe did returne served, and a Pannell returned according, in which pannell there is no Knight named. the truth of which Cause was, that after the returne made, the demandant is published and declared by the Queene and the Heralds, to be Earle of *Kent*, in right and by discent, although hee had not beene so reputed, or named Earle before, and also after that time (that is to say) at the then last parliament, the Tenant is made a Baron by a Writ of parliament, and both parties have places and voyces in parliament, and then the Jury doe appeare in the Court of Common pleas, and the Earle of *Kent* did challenge the array, because no Knight was returned, but it was not allowed him by the Court,

for

for the admittance of both parties as to the contrary, and no default can bee layd to the Sheriffe, for he had no notice of the honourable estates of either of the parties, the demandant not being then knowne or reputed to bee an Earle by discent or of the Tenants then also being no Baron. *Dyer*, 318.

How much the Common Law hath alwaies prohibited perpetuities in Lands and Tenements, you may see in *Corbets* Case, in the first part of Sir *Edward Cookes Booke*, *Fol.* 84. and in many other Cases in the rest of his Books, also *Littleton Fol.* 143. saith, it is a Principle in the Law, that every Land of Fee-simple may be charged with a Rent in Fee-simple by one way or other, but of the Kings Majesty upon the Creation of any Peere of the Realme, Duke, Marquesse, Earle, Viscount, or Baron, do (as the manner is) by his Letters Patents give unto such new created Noblemen an Annuity or Rent for the support of his degree, which they call creation Money, this is so annexed unto the Dignity, that by no grant, assurance, or any manner of Alienation it can be given from the same, but is still incident, and a support of the same Creation, *Dyer fol.* 21. &c.

In all Cases wherein Suite of Law, a Baron or Peere of the Realme, is to be amerced (other then a Duke) his amercement is no lesse then 10 l. 10 s. 5 *E.* 4. 9. 21. *E.* 4. 27. 38. *E.* 3. 31. 9. *H.* 6. 21. but the amercement of a Duke is 20 l. 19. *E.* 4. 9. 1 *H.* 6. 7. although the Statute of *Magna Charta*, Chap. 14. be in the negative, *viz. Comites et Barones non amerciantur nisi per pares suos et*

per

...nisi secundum modum delicti, and yet the usage hath reduced it into a certainty, also by the same Statute it appeareth, that such amercements should be afferred *per pares suos*, but for that it were troublesome to assemble Barons for so small a matter, such amercements in times past hath beene afferred by the Barons of the Exchequer, who sometimes were Barons of the Realme, as is before in this Treatise mentioned, and hereof writeth Bracton, *Lib.* 3. *Tract.* 2. *chap. Fol.* 116. *viz. Comites vero vel Barones non sunt amerciandi, nisi per pares suos secundum modum delicti, & hoc per Barones de Scacario vel coram ipso Rege. Vid. Cooke* 8. *part*, 39. *& sequentia*. This Section is to be omitted, because it is more fitly to be written hereafter.

If a Plaintiffe recover against a Peere of the Realme, in an Action of debt or trespasse, upon such a Plea pleaded by him, or other default in him, so that a Fine thereby doth grow to the King, and thereupon a *Capias ad Finem* issueth out against him, this shall not prejudice that Nobleman, so as the Plaintiffe may thereby take advantage by prayer that he shall abide in Execution, for the Plaintiffe neither without his prayer, nor though he doe pray it, by the opinion of *Bryan*, *Justice* 11. *H.* 7. 2 1.

Whereas by a Statute made 32. H. 8. Cap. 16. It is enacted, that the Subjects of the Realme shall not keepe in their Families or Houses above the number of Foure Strangers borne, nevertheless by a proviso in the said Act, every Lord of the Parliament hath his priviledge allow-

allowed unto him to keepe in his Family the number of six Strangers borne, any thing in that Act to the contrary notwithstanding.

By the Statute of 24. H. 8. Cap. 13. A Priviledge was granted to the Nobility according to their degrees concerning their Apparell, but because by a Statute made in the first Yeare of the King that now is, Chap. 25. all Lawes and Statutes made concerning Apparell are taken away, I leave further to speake of that matter. 3. *Jac. cap.* 25.

By the Statute of 5. *R.* 2. *cap.* 12. The King our Soveraigne Lord of his Royall Majesty defendeth the passe utterly of all manner of people, aswell Clarkes as others, in every Port and other Towne and place upon the Coasts of the Sea, upon the paine of forfeiture of all their goods, except onely the Lords and other great men of the Realme, and true and Noble Merchants, and the Kings Souldiers, and every person then is before excepted, which after publication of this Ordinance made shall passe out of the said Realme without the Kings speciall Lycence, which Lycence the King willeth and commandeth that it be not from henceforth made, but in one of the Ports vnder written, that is to say, *London*, *Sandwich*, *Dover*, *Southampton*, *Plimouth*, *Dartmouth*, *Bristoll*, *Yarmouth*, St. *Buttolphe*, *Kingstane* upon *Hull*, *Newcastle* upon *Tine*, and the other parts and passages towards *Ireland*, and the Iles pertaining to *England*, shall forfeit towards the King as much as he hath in goods as afore

is

said, but because this Statute is also taken away by a late Act of *Parliament*, made in the fourth yeare of King *James*. *cap.* 1. I doe not set downe this for one of the Priviledges appertaining to the Nobility at this day.

But *Phillip* Earle of *Arundel* Sonne of *Thomas* Duke of *Norffolke*, was taken upon the Sea passing into *France*, about the 30. yeare of the late Queene, and was fined in the Star-chamber to a great summe, because he did not take Shipping at one of the Ports mentioned, *Crumptons Courts* 31. Whereas by the Statute of 2. *H.* 2. *Parl.* 2. *cap.* 1. It is ordained, that the Justices of Peace in every County named of the Quorum should be resident in the Shieres wherein they are Justices, there is a Proviso whereby the Lord and Peeres of the Realme named in such Commission are excepted.

By the Statute of 1. *E.* 6. *cap.* 12. amongst other things, it is enacted, that in all and every case and Cases where any of the Kings Subjects shall and may upon his Prayer have the Priviledge of his Clergie, as a Clarke Convict, that may make purgation in all those Cases and every of them, and also in every Case and Cases of Fellony, wherein the priviledge and benefit of Clergie is taken away by this Statute (wilfull malice and poysoning, of malice prepensed) onely excepted the Lord and Lords of the Parliament, and Peere and Peeres of the Realme having place and voyce in Parliament, shall

shall by vertue of this Act of Common grace upon his and their Requests and Prayer, alleadging that he is a Lord or Peere of the Realme, claiming the benefit of this Act though hee cannot reade without burning of the Hand, losse of Inheritance, or corruption of his blood, bee adjudged, deemed, taken, and used for the first time onely to all Instructions, intents, and purposes as a Clarke Convict, which may make purgation without any further or other benefit of the Clergy to any such Lord or Peere from thenceforth at any time after, for any cause to bee allowed, adjudged, or admitted any Law, Custome, Statute, or any thing to the contrary notwithstanding.

By this Statute a Lord of the Parliament shall have the priviledge of his Clergy, where a comm on person shall not, *viz.* for the breaking of a house by day or night, for robbing of any in the high way, and in all other cases exeepted in the Statute of 1. *E.* 6. 12. living in wilfull murder, and poysoning.

But in all other cases wherein Clergy is taken away by any Statute made since the said Statute of 1. *E.* 6. he is in the same Degree that a common and inferior person is, but the Court will not give him the benefit of this Statute, if he doe not require it.

If the Lord of the Parliament doth confesse his offence upon his Arraignment, or doth abjure, or is outlawed for Fellony, it seemes that in those cases he may have the benefit of this Statute, *viz.* his Clergy, for that

that by the Statute of 18. *Eliz. cap.* 18. he nor any other need to make his purgation, but shall be forthwith delivered out of prison by the Justices, *sed quere Poulton*, 202. *b.*

By the Imperiall Constitutions *Nobiles non torquentur in quibus plebeij torquerentur & nobiles non suspendantur sed decapitantur*; and so it is almost growne into a Custome in *England* by the favour of the Prince, for rare is it to have a Nobleman executed in other forme, yet *Thomas Fines* Lord *Dacres* of the South in 33. *H.* 8. and Lord *Sturton* 4. *Mar.* were hanged, *Brooke* fol. 48.

In the first yeare of the late Queene *Eliz. cap.* 1. in the Acts of Parliament, for the uniformity of Common Prayer, &c. there is contained this proviso, and be it enacted and ordained, that all the Lords of Parliament for the third offence above mentioned, shall bee tryed by their Peeres and not by any Ecclesiasticall Courts, reade the Statute at large.

At the Common Law it was lawfull for any Nobleman, or ignoble to retaine as many Chaplaines as hee would for their Instruction in Religion, but by a Statute made 21. *Hen.* 8. *cap.* 13. A restraint was made, and a certaine number onely allowed to the Nobility, and such Chaplaines for their attendance have Immunities as by the Statute at large may appeare, *viz.* Every Archbishop and Duke may have sixe Chaplaines, whereof eve-

ry

ry one shall or may purchase Lycence or dispe-sation, and take, receive, and keepe two Perso-nages or Benefices, with cure of Soules. and that every Marquesse or Earle may have five Chap-laines, whereof every one may purchase Lycence or Dispensation and take, receive, and keepe two Parsonages or Benefices with cure of Soules, and that every Viscount and other Bishop, may have foure Chaplaines, whereof every one may purchase Lycence, and receive, have, and keepe two Parso-nages or Benefices with cure of Soules as aforesaid, And that the Chancellour of *England* for the time being, and every Baron and Knight of the Gar-ter may have three Chaplaines. whereof every one shall now purchase Lycence and Dispensation, and receive, have, and keepe two Benefices with cure of Soules, read the Statute at large.

And forasmuch as retaining of Chaplaines by Lords of great estates is ordinary, and nevertheles-se some questions in Law have beene concerning the true understanding of the said Statute: I thinke it not impertinent to set downe some subsequent resolutions of the Judges touching such mat-ters.

If a Bishop be translated to an Archbishop, or a Baron to be created to an Earle, &c. yet within this Act they can have but onely so many Chaplaines as an Archbishop or Earle might have; for although he have divers dignities, yet he is still but one selfe-same

ge person to whom the Attendance and service ould be done, so if a Baron be made a Knight of the arter, or Lord Warden of the Cinque-Ports, hee all have but three Chaplaines in all, *&sic de similibus.*

Also if such an Officer allowed by the Statute to ve one, two, or more Chaplaines, doe retaine accordingly, and after he is removed from his Office in this ase, he cannot be now non-resident or accept of a seond Benefice if his Compliment, were not full efore his remaining, and yet in that case it behoveth e Chaplaine to procure *a non obstante*, otherwise e may be punished for his non-residency.

So if an Earle or Baron doe retaine a Chaplaine, nd before his advancement his Lord is attainted of reason, as it was in the Case of the Earle of *Westmerland*, after the said Attainder such a Chapaine cannot accept a second Benefice; for though his ord be still living according to nature, yet after the ttainder he is a dead Person in the Law, and therefore out of the case to have Priviledge for himself or for his Chaplaines,

If a Baron have three Chaplaines, and every one of hem, have two Benifices, and after the Baron dyeth, et they shall enjoy those benefices with cure, which were lawfully setled in them before, but in this case hough the said Chaplaine be resident upon one of his enifices yet now he is become unpunishable for being non-

non-residents upon the other, for *cessante causa cessat effectus*, the same Law is if a Baron be attainted of treason or Fellony, or if any Officer be removed from his Office, *Et sic de similibus, vide Actons* Case, *Cooke, 2. part. Fol.* 117. for all those matters.

A Baron or others of degree of Honour doe retain such number of Chaplains as are allowed by the Statute and after upon suite and requeſt, the ſaid noble perſon doth retaine more Chaplaines.

In this Case, they that are first retayned shall onely have priviledge, *nam qui prior est tempore potior est Jure*, so if a Lord doe at any time retayne more Chaplains then are allowed by the Common Law, the lawfull number onely shall have priviledge, and in this case, which of them first promoted, shall have priviledge, and the rest are excluded, for in *equali Jure melior est conditio possidentes*.

If a Nobleman doe retayne Chaplaines (above the number) at severall times, if any of his first Chaplains die, the next that was then retayned shall not succeed for his first retayner was void, and therefore in this Case it doth behove him to have a new retayning after the death of the predecessour, and before his advancement, *nam quod initio non valet in tractu temporis non convalescit*.

If a noble person retaine such a number of Chaplains as is by the Law allowed him, but afterward upon some dislike or other cause doe discharge some of them from their attendance or service, the Lord in this case cannot retaine others, thereby to give them priviledge, during the life of them so retained and discharged: and the reason thereof is, because the first Chaplaines were lawfully retained, and by virtue thereof during their lives might purchase dispensations, to have advantage according to the statute: and therefore if the discharge of their service and attendance might give a liberty to the Lord to retaine others, by such meanes the Lords might advance Chaplains without number, by which the statute should be defrauded; and the said statute must be construed strictly against non-Residents and Pluralities, as a thing prejudiciall to the service of God, and the ordinary instruction of the people of God. These premises are to be read in *Cooks 4 part fol. 90. Druries case.*

By the statute of 3. *H.* 7. *cap.* 14. it is enacted as followeth, *viz. Forasmuch as by quarrels made to such as have been in great authority, office, and of counsell with the King of this Realme, hath ensued the destruction of the King, and thereby the undoing of this Realme: so that it hath appeared evidently, when the compassing of the death of such as were the Kings true subjects was laid, the destruction of the Prince was imagined thereby; and for the most part it hath growne and been occasioned by envie and malice of the Kings owne houshold servants; and for that by the lawes of this land, if actuall deeds were not, there was no remedy for such false compassing imaginations and confede-*

racies had against any Lord, or any of the Kings Counsell, or any of the Kings great Officers in his houshold, as Steward, Treasurer, Controller; and so great inconveniences did ensue, because such ungodly demeanours were not straightly punished before that an actuall deed was done. For remedy whereof it was by the same statute ordained, that the Steward, Treasurer, or Controller of the Kings house for the time being, shall have full authority and power to enquire by twelve sad men and discreet persons of the Check-roll of the Kings honourable houshold, if any servant, admitted to be his servant, sworne, and his name put into the Check-roll of the houshold, whatsoever he be, serving in any manner office or roome, reputed, had, and taken under the estate of a Lord, make any confederacies, compassings, conspiracies, imaginations, with any person or persons, to destroy or murder the King, or any Lord of this Realme, or any other person sworne to the King, Councell, Steward, Treasurer, or Controller of the Kings house, that if it be found before the said Steward for the time being, by the said twelve men, that any such of the Kings servants as is aforesaid hath confederated, compassed, conspired, or imagined as abovesaid, that he so found by the enquiry, be put thereupon to answer, and the Steward, Treasurer, or Controller, or two of them, have power to determine the same matter according to the law: and if hee be put in tryall, that then he be tryed by other twelve sad men and discreet men of the same houshold, and that such misdoers have no challenge but for malice, and if such misdoers be found guilty by confession or otherwise, that the said offence be adjudged felony, and they to have judg-

ment

ment and execution, as felons attainted ought to have by the Common law.

In the statute made in the second yeare of *H.* 5. *cap.* 10. authority is given to the Sheriffe, and other the Kings Justices, for the better suppressing of Riots and Routs, &c. to raise *Posse Comitatus*, the power of the County: and the same liberty doth the Common law give in many other cases. Nevertheless may not the Sheriffe upon such authority command the person of any Nobleman to attend that service; but if the Sheriffe upon a *Supplicavit* against any Nobleman, in that case doe returne that he is so puissant, that he cannot or dare not arrest him, the Sheriffe shall be grievously amerced for such his returne: For by the writ under the Great Seale of the King, commandement is to all Archbishops, Bishops, Dukes, Earles, Vicounts and Barons, and to all liege men of the County, to be ayding unto him in that which to his office appertaineth: And therefore by intendment no person whatsoever can resist the execution of the said writ of the King. Also the Sheriffe may by his discretion levie three hundred men (if need be) to aid him in that behalfe. *Cromptons Justice* 134. 3. *tit.* 7. 1. *Cookes* 5. *part.* 71. *b.*

The words of the great Charter of the Forrest, in the eleventh Chapter, are as followeth: *Every Archbishop, Bishop, Earle, or Baron, comming to us at our commandement, and passing by our Forrest, it shall be lawfull for him to take one beast or two by the view of the Forrester, if he be present; or else he shall cause one to blow a Horne for him,*

that he seeme not to steale our Deere. This statute doth speake but of Archbishops, Bishops, Earles and Barons, yet if a Duke, Marquesse, or Viscount, which be Lords of Parliament, be comming towards the King by his commandement, they also shall have the benefit of this article.

So if the King send to any of the Lords aforesaid to come to his Parliament; or send to him by writ of *Subpœna*, to appeare in the Chancery, before his Councell, or send for him by his missive, or by Messenger, or Serjeant at Armes, in all these cases he shall have the benefit of this statute, because they came at the Kings commandement.

The same Law is if a *Scire facias* goe out of the Chancery or Kings Bench to a Lord of the Parliament: but if such processe goe forth for a Lord to appeare before the Justices of the Common Pleas, or before the Barons of the Exchequer, and he commeth upon that, he shall not have the benefit of the statute; for he doth not come unto the King, and the words be, *veniens ad nos*; and all the processe which are made out of the Chancery and Kings Bench are, *quòd sit coram nobis*; and so are the Processe out of the Star-chamber. Also Lords which come to visite the new King after the death of his Father, (though not sent for) shall have the priviledge: and so note this statute is a warrant dormant to such Lords, which is also to be understood as well of their returning homewards as of their comming towards the King. *Manwood Forrest Lawes cap.* 181. *Cromp. Courts* 167 *b.*

Note

Note this statute doth give licence to kill or hunt in the Kings Parks, though the letter of the statute be *transient per forrestam nostram*, Passing by our Forrest, *Crompts Court* 168.

Note, in certain cases the Law doth give priviledge to the Sons or Brethren of Noblemen, though themselves be not of that degree. *Vide* 21. *H.*8 *cap.*13. 7 *E.*6. *cap.*5.

CERTAINE CASES WHEREIN A LORD of the Parliament hath no PRIVILEDGE.

THe King may by his absolute power commit a Nobleman to prison *durante beneplacito suo* from whence he cannot be discharged by bail or mainprise, or by the common writ *de homine replegiando*: And by the same power it is if a Noble person bee committed to prison by the Kings Councell, for they are incorporate to his Highnesse, and do command as with the Kings mouth. And the same law is if a Noble be committed to prison by the absolute commandement of the Kings Judges sitting in their places of Judicature, *Stamf. lib.*2. *cap.*18. *fol.*72.1. as you have before when

the Prince himself was committed by the chiefe Justice sitting in the Kings Bench, and hee was not baileable.

Also if a *Capias* and an *Exigent* may bee awarded by the Justices out of their ordinary Jurisdiction against such persons upon an Inditement for Felony or Treason, as common experience sheweth.

The statutes of *Præmunire* are 27. *E.* 3. *cap.* 1. 16. *R.* 2. *cap.* 5. upon which statutes an Abbot which was a Lord of the Parliament was impleaded, and he did pray priviledge to appeare by an Atturney; and by the rule of the Court he could not, because the statute is generall and against it; but by speciall writ out of the Chancery he might. And so in case where he doth pray to be received. For if a Lord of the Parliament, holding lands of another in Fee simple, doth forbeare or with-hold to doe and pay his services due to his Land lord, and that by the space of two yeares, whereupon he doth bring a writ of *Cessavit*, which is his remedy given him by the Law, thereby to recover the inheritance of the land: but the said Lord for the saving of his tenancy, being minded to pay all the arrerages before judgment given against him (as by the Law hee ought to doe) in this case hee must come in proper person, and not by Atturney, 19. *H.* 7. 9 *b.*

If a noble man, in contempt of any processe which hath been awarded from out of any the Kings Courts, doth make rescous, and wilfully doth refuse to obey the said writ, and the same his offence doth appeare of record to the Court by the Sheriffs returne, there may be

and

and shall be awarded against him a *Capias*, 1 *H.* 5. Case ult. 27 *H.* 8. 22. *Cooks* 6. *part.* 54.

If any Lord doe depart this Realm, as Ambassadour or otherwise, by the Kings licence or without licence, and doe not returne at the Kings Commandement, or upon the Kings writ under his privy Signet; the King may seize his lands, goods, and chattells, *Dyer* 108. *b.* & 17. the Dutchesse of Suffolks case.

If a Lord, arrested upon a *Supplicavit* for the peace, doe wilfully refuse to obey the arrest, and make rescous upon his returne shall issue an attachment against the said Lord for his contempt to take his body; and this is the way to obtaine peace against any Lord of the Parliament, whereas the party could not have an attachment against him, if the *Subpœna* had beene duly served and peaceably accepted, although the said Lord had not appeared thereunto, *Cromptons* Justice of Peace 134.

If a Lord of the Parliament doth with force and arms detaine a man in prison, in his House or elsewhere, the remedy is in such cases by himselfe or his friends abroad at liberty to have a writ called *de homine replegiando* to deliver him; but if the Lord, to prevent the execution thereof, and of malice, doe keep or convey away this man, so wrongfully imprisoned, so privily, as that the Sheriffe cannot execute his said writ; then will the Court award a *Witheram*, whereby the Sheriffe shall attach and arrest the body of the said Lord, and imprison him untill he doe deliver his said prisoner, 11 *H.* 4. 15.

All Lords are compellable to take the Oath mentioned in the Statute of 3 *Jac.* 4. *&* *vide* the Statute 7 *Jac.* *cap.* 6. who have authority to minister the said Oath to them.

them. *Bracton lib.* 5. *fol.* 337. 6 *H.* 3. & 351. writing of essoines, delivereth this learning, that if a Baron that holdeth by Baron tenure have his absence excused by essoine, he which casteth such essoine or excuse, ought to finde surety that the said essoine is true; but in case of common persons it shall rest upon the credit and integrity of the Essoinee, and so is the use at this day.

The Statute of *magna charta cap.* 14. is *quod liber homo non amercietur pro parvo delicto, nisi secundum modum illius delicti & pro magno delicto secundum magnitudinem delicti & salva predictarum misericordiarum ponatur, nisi per Sacramentum proborum & legalium hominum de vicinate*, and accordingly is the Law thereunto at this day.

But the subsequent words in the said Statute, *viz. Comites & Barones non amerciemur nisi per pares suos, & non nisi secundum modum delicti*, are not in use, for whether the offence be great or small, for which they are to be amerced, their amercement must be certaine, *viz.* of a Duke ten pound, and of any other of the Nobility.

Also whereas the amercement should be offered *per pares* the use is to offer them by the Barons of the Exchequer, *Cooke* 8. Rep. 40. *Bracton lib.* 3. *Tractat.* 2. *cap.* 1. *fol.* 116. *b.*

When a Peere of the Realme is arraigned in Appeale of Fellony, he shall not have that priviledge to bee tried by his Peere, as he should in case of Inditement, but must undergoe the ordinary triall of twelve men, *Stamford* Pleas of the Crowne *lib.* 3. *cap.* 1. *Brook* triall 142. *Ferdinando Poulton* 188. *b.* Read the book of *Entries* title *appeale* Sect. 7. also in Case of an Inditement,

ment, the Defendant, though a Peere of the Realme, may not challenge any of his Triers, either peremptorily or upon cauſes which in like caſes permitted to all other common perſons.

The Judgement to be given againſt any Lord of the Parliament in caſe of Felony or Treaſon, ſhall be no other than according to the uſuall judgement given againſt common perſons; and although the execution be not purſuant (but with the loſſe only of their heads) yet that is by the ſpeciall grace of the King, and not *ex debito*, as by the examples of *Thomas* Lord *Dacre* 33. *H.* 8. and of the Lord *Sturton* 2 *Mariæ*, may appeare, *Brook* tit. Jury 48.

By attainder of Treaſon or Fellony is corruption of blood, ſo that their Children may not be heires unto them, nor unto any of their Anceſtors. And if hee were a noble man before he is by the attainder made ignoble, and not only himſelfe, but alſo his Children, having no regard unto the Nobility which they had by their birth, and this corruption is ſo ſtrong and high that it cannot be ſaved by the Kings pardon or otherwiſe than by authority of Parliament, *Stamford* Pleas *del Corona lib.* 3. *cap.* 34.

But here it is to bee obſerved, that Nobility is not a thing ſubſtantiall, but meere accidentall; for that may be preſent or abſent without corruption of the Subject whereof it dependeth; for experience ſheweth that the paſſage of honourable titles are reſtrained by exorbitant crimes, when as nature in the meane while cannot bee thruſt away with a fork. Wherefore although the Lawyers doe terme and call that extirguiſhment of Nobility,

Nobility, which happeth by such hainous offences committed as corruption of blood, nevertheless they use not this manner of phrase and speech as though Nobility were naturally and essentially in the humour of blood more than any other hereditary faculty; but because the right of inheritance which is by degree of communication of blood directed, is by that meanes determined and ended, and also in regard of the hatred and detestation of the crime it is called corruption of blood, note in *Dyer* 16. *Eliz.* 332. the Lord *Charles Howards* case.

If one be made a Knight in a forraigne Kingdome by a forraigne Knight, yet he is to be so stiled in this Realme in all legall proceedings: but if a man be created by the Emperour an Earle of the Empire, or into any other title of dignity, he shall not beare this title here in *England*. *Cooks* 7. part. 16. 20. *E.* 46.

If there be a Father and Sonne, and the Father is seised of lands holden in Capite or otherwise by knightly service, the King doth create the same Duke and Earle or of any other degree of Nobility, and afterwards the Father dieth, his Sonne being within the age of one and twenty yeares, he shall be in ward; but if the King had made him Knight in the life of his Father, he should not have beene in ward after the death of his Father, neither for the lands descended or for his marriage, though he be within age, *Cooks* 6. part. 74. in *Druries case*.

Nobility, and Lords in reputation onely.

THere are other Lords in reputation and appellation, who nevertheleſſe are not *de jure*, neither can they enjoy the priviledge of thoſe of the Nobility that are Lords of the Parliament.

The ſonne and heire of a Duke, during his fathers life, is onely by curteſie of ſpeech and honour called an Earle, and the eldeſt ſonne of an Earle a Baron; but not ſo in legall proceedings, or in the Kings Courts of Iuſtice, *Brook Treaſon* 2. But the King may at his pleaſure create them in the life of their Anceſtors into any degree of Lords of the Parliament, *Cook* 8. *part* 16. *b.*

A Duke or other of the Nobilitie of a forraigne Nation, doth come into this Realme by the Kings ſafe conduct: in which the Kings ſaid Letters of Conduct he is named Duke, according to his Creation: yet that appellation maketh him not a Duke, &c. to ſue or to be ſued by that name within England, but is onely ſo reputed. But if the King of Denmark, or other Soveraigne King, come into England under ſafe conduct, he during his aboad in England ought to bee ſtiled by the name of King, though hee have not *merum imperium* out of his owne

owne Kingdome, yet he shall retaine *honoris titulos, Cook 7. part 15. b. & sequentia.*

All the younger sonnes of the Kings of England are of the Nobility of England, and Earles by their birth, without any other Creation, and onely Lords in reputation.

And if an English man be created Earle of the Empire, or of other title of honour by the Emperour, he shall not beare the title in England, and therefore is an Earle onely in reputation.

A Lord of Ireland and Scotland, though he be a *Postnatus*, is not a Lord in England in legall Courts of Iustice, though he be commonly called and reputed a Lord.

NOBLE VVOMEN.

ALthough Noble women may not sit in Parliament, in respect of their sexe, yet they are in the law Peeres of the Realm; and all or most of the Prerogatives before mentioned, which to Noblemen are belonging, doe also appertaine to them, *Cook 8. part 53.* But the opinion of some men hath been, that a Countesse, Baronesse, or other woman of great estate, cannot maintaine an action upon the statute *de scandalis Magnatum*, because the statute of *2. R. 2. cap. 5.* speaketh but of Prelates, Dukes, Earles, Barons, or other Nobles, and other great men of the Realme: and of the Chancellour, Treasurer, Clarke of the Privie Seale, Steward of the Kings house, Iustice of the one Bench or of the other, great officers of the Realm: by which words they conceive the meaning of the makers of that statute was, onely to provide in that case for Lords, and not for women of honour. *Crompton Justice of Peace 45. b.*

Also if any of the Kings servants, within his Checkroll, doe conspire the death of any Noble man, it is not felony within the compasse of the statute *3. H. 7 cap. 13.*

Honourable women are of three sorts: By creation, by Descent, or by Marriage. King *Henry* the eighth created *Anne Bullen* Marchioness of Pembrook: and so may the King create any woman into any title of honour, as to his Highnesse shall seem good. As the King by his

by his Letters Patents openly read in the Parliament did create Widow, the sole daughter of late Baron of Abergavenny, Baroness De le Spencer. *Cambden* 63.6.

Noble women by descent are those to whom either the lands holden by such dignity do descend as heir; and they are said to be honourable by tenure: or those whose Ancestors to whom they are heires, were seised of an estate descendable unto them, in their titles of Dukedomes, Earldomes, or Baronies: or those whose Ancestors were summoned to the King's Parliament, for thereby also an inheritance doth accrue to their posterities.

Noble women also are those who do take to their husbands any Lord or Peere of the Realme, although they of themselves were not of any degree of Nobility, *Fortescue de laudibus legum Anglia, fol.* 100. Question and doubt hath been made, whether if a man be summoned to the Parliament, and afterwards die without issue male, the dignity and title of honour may descend to the heire female; and many arguments have beene made *pro & contra*, in that which at this time I doe purposely omit because I have before discoursed thereof in the title of Barons in this Treatise.

Concerning the title of honour descendable to the heire female by reason of a tenure in her Ancestor, there need no more doubt to be made than of offices of honour, the which doe much import the publike wealth, and being of estate of inheritance, doe descend to the heire female, if there be no heire male: as the office of high-Constableship of *England*, challenged in the time of *H.* 8. by the Duke of *Buckingham*, and judged by the advice

advice and resolution of the Judges, as by a note of that case extant, whereof my Lord *Dyer* in his Reports hath a memoriall, is most evident, *Dyer* 283. *b. Kellaway* 6. *H.* 8. 170. *b.* which descended to the daughters of *Humphrey de Bohun* Earle of *Hereford* and *Essex*, as afore is declared; the office of a Lord Steward descended to *Blanch* daughter of *Henry* Earle of *Lancaster*, in whose right *John of Gaunt* her husband enjoyed the same. The like may be said of the office of Earle Marshall, which descended by an heire female unto the house of *Norfolk*; all which offices are as unfit to be exercised by a woman, as it is unfit for a woman to be summoned to the Parliament as Baroneſſe by writ, as before is written.

And when the title of honour doth descend to a woman, if question in Law doe arise betweene the noble woman and any other person, whether she be of that degree of nobleneſſe or no, the issue shall be tried by the Record thereof, and by the Kings writ it shall be certified, and not by a Jury of twelve men, even as it should be in case her Ancestors had beene party, *Cooks* 6. part. 53. & 7. part. 15.

Although the Lawes of this Realme regularly doe make all the daughters, where there are no sonnes, equally to inherit Lands and Tenements, and to be but one heire to their Ancestor; yet it is not so in the descent of dignities and titles of honour, for inheritances concerning matters of honour, being things in their nature entire, participating of superiority and eminency, are not partable amongst many, and therefore must of necessity descend unto one, and that is to the eldest daughter, sister, aunt, or cosin female, inheritable where there is no

no heires males that may lawfully challenge the same; and so in this point is the civill Law.

Nevertheless there was a Judgment in the time of *H.* 3. touching the descent of the Earldome of Chester, after the death of the Earle, who dyed without issue, his sisters being his heires: which Judgement was, that the said Earldome should bee divided amongst the said copartners, as other lands, and that the eldest should not have it alone, 23. *H.* 3 *Fitz. partie.* 18. But this judgement was holden erroneous, even in those times wherein it was given: For *Bracton* (a learned Judge who lived in that age) thus writeth thereof, treating of Partition among Copartners, *lib.* 2. *cap.* 34 *fol.* 76. *b.* *De hoc autem quod dicitur, quod de feodo militare veniunt in divisione capitalia messuagia, & inter coheredes dividuntur, hoc verum est, nisi capitale messuagium illud sit caput comitatus propter jugladii quod dividi non potest; vel caput Baronia, castrum, vel aliud ædificium, & hoc ideo ne sit caput per plures particulas dividatur, & plura jura Comitat' & Baroniarum deveniant ad nihilum, per quod deficiat regnum, quod ex Comitatibus & Baroniis dicitur esse constitutum: Si autem plura sunt ædificia quæ sunt capita Baronia, dividi possunt inter coheredes, salva electione salvo jure essentiæ, quia cùm plura sunt ibi jura, quodlibet per se poterit integrè observari, quod quidem non est in uno, ut prædictum est, licet à quibusdam dicatur, quòd in aliis regionibus aliquando de consuetudine dividatur, sed quod nunquam dividi debeat in Anglia videtur, nec visum fuit contrarium, & erit consuetudo regionis observanda, ubi hereditas & qua petitur, & persona nascuntur qua petunt, & unde sic dicatur quòd in regno Anglia aliquando facta fuit partitio, hoc fuit injustum.*

It

It is therefore evident, that Baronies and dignities of Honour, do by the Lawes of this Realm, descend unto the eldest Coapercener, and the Iudgement given once to the contrary thereof *Bracton* doth rightly account to be unjust, his reason is notable, for in as much as the honour of the Chivalry of the Realme doth chiefly consist in the Nobility, reason would not that such dignitie should be divided amongst Coparceners, whereby through multitude of partitions, the reputation of Honour in such succession and so divided, might be impaired; or the strength of the Realme being drawne into many hands, with the decrease of livelihood by partition should be enfeebled; in which Resolution *Britton* the learned Bishop of *Hereford*, who compiled his Booke of the Lawes of the Realme by the commandement, and in the name of *E.* 1. according *Britton* 187. and therefore howsoever that Judgement was given or whensoever, it is nevertheless very evident that it was soone redressed; for if it were given upon the death of *Ranulph* the last of that name the Earle of *Chester*, who dyed about 17. *H.* 3. without issue, the Writers of that time doe testifie, that the Earledome of *Chester* came wholly unto *John Scot* the sonne of *David* Earle of *Huntington* and *Anguish*, and of *Maud* the eldest sister of the said *Ranulph*, if it were given upon the death of the said *John Scot*, who dyed without issue about 14. *H.* 7. yet notwithstanding the said Judgement stood not in force, for that the said King assumed the said Earledome into his owne hands upon other satisfaction made to the sisters Coparceners of the said *John Scot*. *Ne tanta hereditas tolus deduceretur. Matth. Paris Monast. S. Albani in Arra fol.* 3. 66. *B. tamen vide Vill. fol.* 73. *et Joh. Guill.* 78.

For this it is to be observed out of Presidents, and to be acknowledged of every dutiful Subject, that the King is at liberty to call and advance to honour whom his Highnesse shall in his Princely wisdome thinke most meet, and therfore whereas *Ralph Lord Cromwell* being a Baron by Writ, dyed without issue, having two sisters and co-heires, *Elizabeth* the eldest, married unto Sir *Thomas Nevill* Knight, and *Ioane* the younger married unto Sir *Hunt Burther*, hee who married the younger sister was called unto the Parliament as *Lord Cromwel*, and not the said Sir *Thomas Nevill* who had married the eldest sister; and *Hugh Lupus* the first and great Earle of *Chester*, was by the Conquerour his Uncle created Earle of *Chester*, *Habemus sibi & heredibus adeo liberè per gladium sicut ipse Rex tenuit Angliam per Coronam*, *Hugh* dyed without issue, and the inheritance of his Earledome was divided amongst his foure sisters, and the eldest had not the Seigniory entire unto her selfe. Reade *Mills* 74, 75. *Cookes* 6. *part* 53. & 7. *part* 15.

If a Woman be Noble by birth or by discent, with whomsoever she doth marry, though her Husband bee under her degree, yet she doth remaine Noble for her Birthright, *Est Character indelibilis*, *Cook* 4. *part*, 118. *b*. 6. *part*. 53. *b*.

Other Women are enobled by Marriage, and the text saith thus, *viz*., Women with the honour of their Husbands, and with the kindred of their Husbands, we worship them, in the Court we decree matters to passe in the name of their Husbands, and into the house and surname of their Husbands wee doe translate them, but if

if afterwards a woman doe marry with a man of baſer degree, then loſeth ſhe her former Dignitie, and followeth the condition of her latter Husband, *Forteſcue de laudibus legum. Angl.* 100. And as concerning the ſecond diſparaged Marriage, as aforeſaid, many other bookes of the law doe agree, for theſe bee rules received in thoſe Caſes, *Si mulier nobilis vupſerit ignobili deſit eſſe nobilis & eadem modo quo quidem Conſtitut, diſſolvitur, Cookes 6. part 53. B. & 4. part 118.*

It was the Caſe of *Ralph Hayward* Eſquire, who tooke to his wife *Anne*, the widdow of the Lord *Powes*, they brought an Action againſt the Duke *of Suffolke* by the name of *Ralph Hayward* Eſquire and the Lady *Anne Powes* his wife, and exception was taken for miſnaming her, becauſe ſhee ought to have beene named by the Husbands Name, and not otherwiſe, and the exception was by the Court allowed; For ſaid they, by the Law of God ſhee is *Sub poteſtate viri*, and by our Law her Name of Dignitie ſhall bee changed according to the degree of her Husband, notwithſtanding the curteſies of the Ladies of Honour and Court, *Dyer*, 79.

And the like was alſo in Queene *Maries* Raigne, when the Dutcheſſe of *Suffolke* tooke to her Husband, *Adrian Stoakes Prob.* 456. and many other preſidents have beene of latter time, and herewith agreeth the Civill Law punctually, *Digeſt. lib.* 1. *Tit.* 9. *Lege* 8. *Eodem de Dignitate*, *Liber* 12. *Lege* 2.

In this case of acquired Nobility by Marriage of Question in Law be, whereupon an issue is taken betweene the parties, that is to say, Dutchesse or not Dutchesse, Countesse or not Countesse, Baronesse or not Baronesse, the tryall hereof shall not be by Record, as in the former case, but by a Jury of 12. men, and the reason of the diversity, is, because in this case the Dignity is accrewed unto her by marriage, which the Lawyers tearme matter in fact, and not by any record, *Cookes 6. part. 53. a.*

But a noble Woman by Marriage, though she take to her a second Husband, a man of meane degree, yet shee may keepe two Chaplaines according to the Proviso in the Statute of 21. *H.* 8. *c.* 13. for and in respect of the honour which once she had, *viz.* at the time of the retayner, and every such Chaplaine may purchase lycense and dispensation, *Cookes 4. part 117. Cowels Institutions lib. tit.* 10. 15. but her Chaplaines may not be nonresident afterwards.

And forasmuch as the retayning of Chaplaines by Ladies of great estates is ordinary, and nevertheless some questions in law have beene concerning the true understanding of the said Statute law, I thinke it not impertinent to set downe some subsequent resolutions of the Judges touching such matters.

Anne Baronesse of Mount Eagle in her Widdowhood, did retaine two Chaplaines according to the Statute, and one of them had but one Benefice, and therefore did obtaine a dispensation with a confirmation from the Queene according to the tenour of the said Statute, but before he was presented to his second Benefice, the Lady did take to Husband *Henry* Lord *Compton*, whereby shee

she did forsake her former dignity of Baroness of *Mount-Eagle*; and afterward the said *Chaplain* did accept a second Benefice, and was thereunto admitted and inducted, and the Judges have resolved that the *Chaplain* hath done nothing herein, but according to the meaning of the Statute, and that the Ladies marriage between his Retainer and acceptance of his second benefice, was no Countermand Revocation or determination of that Retainer, which the Lady lawfully then did make, but that he living, he might proceed to the filling up of the qualification, *Causa & origio est materia negoti*; for though the wife of a Noble-man during the covecture, cannot by Law retain a *Chaplain* to be qualified according to the Statute; because by Intendment her Husbands *Chaplains* are sufficient for that Office; yet forasmuch as the Retainer was lawfull: then she was widdow, that being the principall matter, shall enable him to take use and benefice after her marriage: for though the husband and wife are but one person in Law, yet as the Text is, *sunt animo duo in carne uno. Bracton, lib. 5. fol. 363 a.*

And in this case by the death of the Lord *Compton*, her first Retainer, was not determined; for without any peer Retainer, her said Chaplain may take his second benefice and also for that cause, so long as the said Chaplains do attend upon their said Lady in her House, they shall not be endammaged for Non-residency, *Cooks 4. part. 117. fol. 90. & 76.*

That which remains concerning the further exposition of this statute, you may read before in the title of privilege of Lords.

So long that the wife of a Duke be called Dutchesse, or of an Earl be a Countesse, and have the fruition of all

the Honours, appertaining to that estate, with kneeling, tasting, serving, and the rest, and so long shall a Baron's widow be saluted: Lady and a Knights wise also by the courteous Speech of *England, quandiu Maj. aut viduitas vic. durant*, except she happen to relaps with an Adulterer; for as the Laws of this Kingdome do adjudge that a woman shall lose her dower in that case, *viz. west cap. B. F. N. B. fol.* 150. *H. Perk. fol.* 70. *Kitchin* 162, *b.* as Rum Lands, and Tenents, so justly; so doth the Laws of Gentry and Noblenesse, give sentence against such a woman advanced to Titles of Dignity by the husband, to be unworthy to enjoy the same, when she putting her husband out of mind, hath subjected her self to another.

If a Lady which is married come through the Forrests, he shall not take any thing but a Dutchesse, or a Countesse shall have advantage of the statute, *de Charta Forest*, 11. *Art.* during the time that she is unmarried, *Cromptons Court fol.* 167, *b.*

Wheras it is contained in the great Charter amongst other things in the Form, which followeth: no Freeman shall be taken or imprisoned, or deseised of his Free-hold or his Liberties, or Free-customs, or shall be outlawed or banished, or in any wise destroyed, nor go upon him but by the lawfull judgment of his Peers, or by the Law of the Land In which statute is no mention made, how women, Ladies of great estate; because of their Husbands, Peers of the Land, married or sole; that is to say, Dutchesse, Countesse, or Barronesse, shall be put to answer, or before what Iudges they shall be judged, upon an Inditement of Treason, or Fellonyes by them committed, or done, because wherof it is an Ambiguity in the Law of *England*, before whom, and by whom, such Ladies so en-

dicted

dicted shall be put to answer, and be judged by our said Soveraign Lord the King, willing to put out such Ambiguities and Doubts, hath declared by Authority aforesaid; that such Ladies so endicted, or hereafter to be endicted, whether they be married or sole therof, shall bee brought in answer, and put to answer, and judged before such Iudges, and Peers of the Realm; as Peers of the Realm should be, if they were endicted of any Treasons, or Fellonyes, done or hereafter to be done, and in like manner and Form, and in none otherwise, *Anno* 2, *H.6. Cap.* 9. Which statute was but a Confirmation or Declaration of the common Law, *vide Cooks*, 6, *part* 52. *b.*

This is a Rule in the civill law, *si filia R. nubat alicui dom. vel, Comiti dicetur, semp. Regalis.* As amongst Noble women there is a difference of degrees, so according to their distinct excellentnesse, the law doth give speciall Priviledges as followeth.

By the statute of 25. *E.* 3. *cap.* 2. It is High Treason to compose or imagine the death of the Queen, or to violate the Kings Companion.

The Kings Espouse is a sole person, exempted by the common law, and she may purchase by Fee-simple, or Make leases, or Grants without the King, she may plead and be impleaded, which no other married woman can do without her husband, *Cook* 4 *part* 23. *B. Theol. lib.* 1. *cap.* 4. 24. *E.* 3. 63. *vide Bracton* 363. *a.*

All Acts of *Parliaments* for any cause, which any way may concern the Queen and her Capacity, are such statutes wherof the Judges ought to take recognisance, as of generall statutes; for though the matter do only concern the Capacity of the Queen; yet it doth also concern all the subjects of the Realm, for every subject hath interest

in the King, and none of his Subjects who are within his Lawes is divided from the King being his head and Soveraigne, so that his businesse and things do touch all the Realme, and as all the Realme hath interest in the King, so and for the same Reason in the Queene being his wife, *Plouden* 23. 1. *a. Cookes* 8. *Repl.* 28.

A man seised of divers Lands in Fee, holden by Knights service, some by Prioritie that is by ancient Feofment holden of others, and some other parts holden by the same tenure of the King by posteritie, the King granteth his Seigniory to the Queene, and afterwards the Tenant dyeth, the sonne within age in this case the King shall have the Wardship of the Body, and have the Prerogative even as the King himselfe should have had, 3. *E.* 3, 4. *vide etiam Stamford Prerog. Reg. cap.* 2.

The Queene, wife unto the King or widdow, shall not be amerced if she be non-suited in any Action or otherwise, in which cases any other subject of what degree soever shall be amerced, for in this case the Queen shall participate the Kings Prerogative, *Cookes* 6. *Report* 62.

But the Queene shall not in all cases have the same Prerogatives that the King shall have in the same case; as for Example, Petition is all the remedy the Subject hath when the King seizeth his Lands or taketh away his Goods from him having no title by order of Law so to doe, contrary to the opinion of some ancient Bookes, as you may see *Stamfords Prerog. cap.* 19. But in such suit shall be made to the Queene, but actions against other Leiges of the King, according as the case shall require, for by the same reason that the Queene

may

may be Plaintiffe and Demandant in actions without the King by the same reason that the Queene may be Plaintiffe and Demandant in actions without the King, by the same reason he shall be Defendant or Tenant, without pertaking such Prerogatives as doe appertaine to the King, 11. *H.* 4. 64. *B. Stamford Prerog. cap.* 22. *in fine.*

Against the King by his Prerogative, *Nullum tempus occurit Regi*, but time shall runne against the Queen *H.* 18. *E.* 3. 2. *a.* and aplenarty by sixe mouthes *is* a good plea in a *Quare Imp.* brought by *Philippa Regina Anglia ibid. fol.* 1. *et* 13. *b. Stamford Prerog. cap.* 18. *prope finem.*

In 21. *E.* 3. 13. *b.* It is thus to be read, note that a protection was sued forth against the Queen, in a Writ which she brought, and it was allowed though shee be a person exempt.

Nevertheless by this short case following may bee observed, that the Justices doe not easily suffer any proceedings in Law against the Queene, wife or widdow, but will hold with their Inmities as much as they may by Law.

A Writ of dower was brought against *Isabel* Queene of *England*, mother of the King that then was, and the Court said to the Plaintiffe, the Queene is a person of dignitie and excellencie, and we are of opinion, that she shall not answer to the Writ, but it behooveth you to sue to her by Petition, and thereupon the Demandant *dixit grat.* and shee prayed the Court to grant a continuance of her Action untill another day, so that in the meane time she might sue to speake with the Queen but the Court would not agree to make a Continuance, but

but said, that upon her request they might give d
precepart. and so it was done for the Queenes Counc
would not agree to a continuance, for thereby th
Queene should bee accepted as answerable, 10. E
3. 379.

The wife of the Kings eldest sonne also hath so
Prerogative, in regard of the excellencie of her Hu
band, which the wives of other Noblemen have not,
by the Statute of 25. *E.* 3. it is high Treason to viola
the wife of the Kings eldest sonne and heire.

Dutchesses also and Countesses have speciall Honou
appertaining to their Estates, as kneeling and tasting
and such like, which things as appertaining more pr
perly to the Heraulds then to this legall discourse I lea
into them.

By the Statute made 7. *Iac. cap.* 6. intituled, An A
for the Administring the oath of Allegiance and Refo
mation of Women recusants if any person or persons
or above the age of 18. yeeres and degrees aforesaid
must and hereafter shal stand and be presented, indicted
or convicted for not comming to Church, or not recei
ving the holy Communion or Sacraments of the Lord
Supper, according to the Lawes and Statutes of thi
Realme before the Ordinary, or other having lawfull
power to take such presentment or indictment, then
of the Privie Counsell of the King his Highnesse h
Heires or Successours and no other, whereof th
Lord Treasurer, the Lord Chancellour, Lord Privi
Seale, or principall Secretary to be one, upon know
ledge shall require such person or persons to take the
said Oath, but it shall be lawfull to and for every Bi
shop within his Diocesse, to require any Baron or Ba
ron

rons of the age of 18. or above, to take the said Oath.

Also in cases of indictment of Felony or Treason, a Baronesse shall have the same tryall by Peeres, as doth appeare by the Statute of 20. *H.6.cap.9.* which any other Noble woman of higher degree shall have, which priviledge is denyed to all of a lower degree then a Baronesse.

Ladies in Reputation.

The wife and widdow, and widdow of the sonne and heire of a Duke or Earle in the life of his Father, is a *Lady* by courtesie of speech and honour, and taketh place according as in ancient time hath been permitted by the Soveraign Prince and allowance of the Herauld, but in legall proceedings they are not to have priviledges, nor to be named according to such sirnames of dignity, but the King may at his pleasure create such men in the life time of their Ancestors into degrees of *Lords* of his Parliament, and then the *Law* is otherwise.

If a Noblewoman of *Spaine* come into the Realme by safe conduct, or otherwise by the King, shee be stiled by such her forraign stile of dignity, yet in the Kings Courts of Justice she shall not be named by such title, though by common speech she be a Lady in reputation.

An English woman borne doth take to her Husband a Spanish or French Duke, though he be made a Denizen, yet he shall not beare his title of dignity in legall proceedings.

A German woman is married to the Earl of *Northam*, or to other the Nobility of *England*, unlesse she be made a Denizen, she cannot lawfully claim the priviledges or title of her husband, no more then she can to have dower, or any jointure from him.

An

An English Woman doth take to Husband the Earle of *Kildare* in *Ireland*, or if a Lord of *Scotland*, though he be a *post natus*, take an English woman to his wife, their wives shall not participate their husbands Titles of Dignitie.

But if the King do create one of his Subjects of *Scotland*, naturalized here by Act of Parliament, to be Viscount *Rochester* within *England*, and after by his Writ of Summons under his Great Seale, doe call him to his uper House of his Parliaments, and assigne him a place there in his great Councell amongst the Lords and Peeres of the Realme, hee is now also a Peere of this Realme, and shall be partaker with them in all Priviledges, and by consequence, his wife, widdow, and children after him, 32. *E.* 3. 35. *in le case de Gilbert Humfrevill.*

But if an Englishman by the Emperour be made Earle of the Empire, his wife shall not beare that title of Honour, either according to Law or in Reputation.

All the Daughters of Dukes, Marquesses and Earles are by custome of long time used in the Kings Houses or palace, named Ladies, and have precedencie and place according to the degrees of their parents, and so of this custome the Law doth take notice and give allowance for the honour and decencie; but nevertheless, in the the Kings Courts of Justice they beare not these titles of Honour no more then the sonnes of such Noble person may doe, brothers to such Ladies.

Finis Nobilitatis.

A TREATISE OF KNIGHTS AND Matters incident to the Degree of Knighthood, according to the *Lawes of England.*

THE particular kinde of services, by which lands of Inheritance are distinguished be two, *viz.* Knight service, and socage; *vide Littletons Soccage, c.* 26.

In ancient time, Tenure by Knights service was called *Regale Servitium, Cooke* in his Preface to his 3. Book, *fol.* 3, *a.* because it was done to and for the King and the Realme, and *forma secum servitium*, as appeareth in *Anno* 19. *Edw.* 2. *Title Avowry* 224. 26. *ass. p.* 66. 17. *H.* 4. 19. *Cookes* 7. *part* 8. *a. Calvins* case, because they which doe hold by soccage, ought to doe and performe their services out of the Realme, *Littleton*, 35. *Et ideo forma secum dicipoterit quia sita & capitur foris, & Hum. Servitiam per'olvuntur ratione tenementarum, & non personarum. Bracton, fol.* 36.

And

And as Knights service land requireth the service of the tenement in warfare and battell abroad, so Soccage tenure commandeth his attendance at the plough; the one by manhood defending the King or his Lords life and person, the other by industry maintaining with rents, corne and victuals, his estate and family. *See Lambert Customes of Kent, fol.* 389.

For they did thus order their owne lands and tenements, one part they kept and detained in their owne hands, and in them stately houses and Castles were erected and made for their habitation and defence of their persons and the Realme; also Forrests and Parkes were made there for their pleasures Solace and Delight.

One other part hereof was given to the Nobles and others of their Chivalry, reserving tenure by Knights service. The third part was bestowed upon men of meaner condition and quallity, with reservation of soccage tenure; and in this manner the Dukes and other the Nobles with their menialls and followers dissipate to a great part of their lands, *viz.* to their Gentlemen of quality to hold by Knights service, and to others of meaner condition by Soccage tenure.

Gervasius Tilburiensis, a learned man, who flourished in the dayes of King *Hen.* 2. in his Dialogue of the observation of the Kings Exchequer, hath in effect as followeth, Untill the time, saith he, of King *Hen.* 1. the King used not to receive money of their lands, but victuals for the provision of their house, and towards the payment of their Souldiers wages, and such like charges; Mony was raised out of the Cities and Castles, in which

Hus-

Husbandry and Tillage was not used and exercised; But at length when the King being in the parts beyond the Seas, needed ready money for and towards the Furniture of the warres, and his Subjects and Farmers complained that they were grievously troubled by carriage of Victuals into sundry parts of the Realme farre distant from their dwelling houses; the King directed Commissions to certaine discreet persons, who having a regard of those Victuals should reduce them into reasonable summes of Money, the leavying of which summes they appointed to the Sheriffe, taking order withall, that he should pay them at the scale or beame, that is to say, That hee should pay sixe pence over and above every pound weight of money, because that they thought that the money in time would waxe so much the worse for the wearing. *Cambdens Perambulation of Kent, fol.* 172, 173. *Vide Littleton, libro* 2. *fol.* 26. Note also *Gervasius Tilburiensis*, who lived, *Anno* 1160. *Anno* 6. *Hen.* 2. And *Cambden, fol.* 178.

It was anciently ordained, that all Knights Fees should come unto the eldest Sonne by succession of Heretage, whereby hee succeeding his Ancestours in his whole Inheritance, might bee the better enabled to maintaine the warres against the Kings Enemies or his Lords: And that the Soccage Fee should be partable betweene the Male Children to enable them to encrease into many Families, for the better furtherance in and increase of Husbandry. *See Cookes Preface to the Reader, in his Ninth Booke, Fol.* 2. 6.

But as nothing is more unconstant then the estate

estate we have in Land and livings, if at least I may call that an estate which never standeth even so long since. These tenures have been so indifferently mixed and confounded in the hands of each sort, that there is not now any note of difference to be gathered by them. See *Lamberts perambulation of Kent, fol.* 10.

Et quia tale servitium formi secum non semper manet sub eadem quantitate, sed quandoq; præfat. ad plus quandoq; ad minus Ideo qualitate Regalis Sencitii & quantitate fiat mentio in charta ut tenens vellu tenere possit quid & quantum persolvere tentatur. Bracton. fol. 36.

And therefore the certainty of the law in this case is, That he that holdeth by a whole and entire Knights fee, must serve the King or other *Lord* fortie dayes in the warres, well and sufficiently arrayed and furnished at all points, and by twenty dayes if he hold but the moitie of a Knights fee, and so proportionably, *vide Littleton. fol.* 20.

Anno 7. *E.* 3. 1333. *fol.* 246. It was demurred in Judgement, whether the 40. dayes should be accounted from the first day of the muster of the Kings Hoast, or from the day that the King doth first enter into *Scotland*, but it seemeth that the dayes shall be accounted from the first day that the King doth enter into *Scotland*, because the Service is to bee done out of the Realme.

And they who hold *per regale servitium*, are not to performe that service unlesse the King doe also go himselfe into the warres in proper person, and that by the opinion of Sir *William Hall* Chiefe Justice of the Court of Common Pleas, *Term. Trin. Anno.* 7. *Ed.* 3. *fol.* 246. but see *Anno* 3. *H.* 6. *Titulo protec.* 2. In which case it was

was observed that seeing the protector (who was *pro Rex*) went the same, was adjudged a Voyage Royall, *vide Cook*, 7 *part* of his reports, and in *Fitz-Herbert, Natura brevia*, 28. *fol.* 83.

Also when before the statute, *De quia emptores terrarum*, made *Anno* 18. *Ed.* 4. the King or other Lord had given Lands to a Knight to hold of him by service in Chivalry to go with the King or with his Lord, when the King doth make a Voyage Royall to subdue his Enemies by 40 days well and conveniently arrayed for the Wars.

In this case, the *Law* hath such regard to the dignity of Knighthood, that he may find an able person to go in that expedition for him, and the Knight is not compellable by his tenure to go in person, as do ordinary souldiers, who are hired and entertained by prest money or wages *Anno* 7. *Ed.* 3. 296. 600. 8. *part fol.* 49. *b.* And see *Littleton fol.* 20. another reason in this case.

There have bin many varying opinions of Countries of a Knights Fee, as you may read in 5. *Ed. Cooke* 9. *part* of his Reports, *fol.* 124. where he seemeth to prove that antiquity hath thought that 20. l. in land was sufficient to maintain the degree of a Knight, as it appeareth in the ancient Treatise,

De modo tenendi Parliamentum tempore Regis Edw. filii Regis Etheldred.

Which also doth concur with that Act of Parliament made *Anno* 1. *Ed.* 2. *de militibus*, by which Act of Parliament *Census militis*. The state of the Knight is measured by 20. l. land a year, and not by any certain content of

veres, and with this doth agree the state of *Westmin. ca.* 36 and *Fitz-natum Brev.* 82. where 20. l. land in socage is put in *Equipage* with a Knights Fee, and this is the most reasonable estimation, for one acre may be lesse in value then many others, *vid. An.* 27. *E.* 3. *c.* 11. the printed books of the titles of honor, 319. *M. Selden nota.* And it is to be observed, that the relief of a Knight, & of all Superiours that are noble, is the 4. part of their revenue by the yeer, as of a *Kt.* 5 l. which is the 4. part of 20. l. *& sic de cet.* And this doth appear by the statute of *Mag. charta ca.* 8 as in *Cook 9. report. f.* 124. *b.* And because this tenure doth conteem service in war, the Tenants, therfore are named *milites a militia.* For though the word do properly signifie a Souldier, yet *antiquity* hath appropriated that name to the chiefest of the *military profession, vid. Bract. f.* 35. *b.* In our law they are stiled *Miles*, and never *Equites*; yet so, that *Miles* is taken for the selfsame, that *Chevalier* by M. *Selden* in his *Titles of Honour*, 1. *Impression f.* 334. *Bracton f.* 79. maketh mention of *Rod-knights*, that is to say, *serving horsemen*, who held their lands with condition, that they should serve their Lords on horseback, and so by the curting of a piece of a name, as our delight is to speak short, *this name of Knight remaineth with us, Cambden fol.* 171. for *Armiger scilicet Esquire*, which is a degree under a Knight was in the *Militarie Service.*

Note, that he that holdeth by a whole *Knights Fee*, must be with the King by 40. days well and conveniently arrayed for the war, *Littleton fol.* 20. which is to be understood to serve on horseback. And in all Nations the name of this dignity is taken of *Horses*; for the *Italians* calleth them *Caveleiri*, the *French-men Chivalers*, the *Germans Royfters*, our *Britains in Wales, Morgogh.* All of *Ryding*, &

in *Latin* we call them *equites aurati*, for at their creations beside the sword and girdle, guilt spurs, were added for a matter of more ornament.

See the statute of *Anno* 8. *H.* 5, *C.* 3. *M. Selden f.* 317. and when a Knight doth commit any offence, for which he is by the *Law* to suffer death.

The use hath bin in the beginning of this punishment to degrade and deprive him publikely of his *Honour* of *Knighthood*. For it is but life lost or taken away. *Vide Mills fol.* 81. by ungirding his *Military girdle*, by taking away his sword, his guilt Spurs cut off with a Hatcher, his Gauntlets pluckt off from him, and the schochean of his Arms reversed, 4. *E.* 4. 20, *Cambden* 171 *b.* and of the degradation of a Knight, which was *Andrew Horkley*, under *E.* 2. who was a Scot born, by that King created Earl of *Carleile*, *vide Selden*, his *Titles of Honour*, *fol.* 337.

And by the statute made *Anno* 24. *H.* 8. *cap.* 13. *intituled*, *An Act of Reformation of apparell*. It was permitted for *Knights* to wear in a Collar of Gold, named a Collar of 55. *Esses*, And although this dignity of *Knighthood* had its originall and was given to men of war; yet in all successions of Ages, and in all Nations the same also is bestowed on men of peace by Sovereign Kings, that in severall Functions and places in the *Common-weal* be of singular desert, wherby the service of the *Common-weale* at home is levelled and made equall with that abroad, for as *Tully* said truly, *Parva sunt foris*, *Arma risi est Consilium domi*. He that receiveth the Dignity of a Knight kneeleth down, and the King slightly smiteth him upon the shoulder speaking these words unto him therwithall in *French*. *Soit Chevalier a nome de dieu*, that is to say,

Be thou a Knight in the name of God, and then afterwards therupon the King saith, *Avances Chevalier*, that is, arise Sir Knight, *vide Hooker al. Vocrell*, his *C.*10. *fol.* also *Selden f.* 37. who there speaketh of our Earl Marshal of *England* for making of Knights; for a Knight is not made by Letters pattents or by the Kings Writs, as are those of greater dignity, but by the sword: For this Honour is supposed to be given on the sudain, and therfore it is commonly done only by the sword without any pattent, but the King may by his *Letters Pattents* create a Knight.

Earls in ancient time had power in Knighthood, M. *Selden title Honors, fol.* 136. But now neither may the Prince nor any other of the Nobility make a Knight, but only the King or his Lieutenant by Commission hereof, *vide Cook 6. part Dyer reports. f.* 74. *b.* No man is born a Knight, *Selden f.* 318 as he may be to titles of Honour, *Causa patet.* But a Knight may be made so soon as he is baptized, as in that book is mentioned, except Knights Barronets, whose posterity doth receive that title by discent with some limitation; as in the Kings Books therof may appear. Note also in the said Titles of Honour, *fol.* 318 and 313. the first Knight made in *England.*

With us in *England* there are divers sorts of Knights, wherof *Camden fol.* 171. and *Mills* do write at large; but my purpose is only to speak of one order of them: amongst the *Romanes* there was but one Order of them, And these were next in degree to the *Senators* themselves, as with us they are to the Barons; and they who simply without any addition be called Knights, howsoever they are in Order ranked last; yet by institution they

be

be first and of greatest antiquity, and the other attributes according to the severall inventions of particular Princes.

And I do not remember, that in our Law books, I have read any thing concerning the Order of Knights, with addition, *viz.* Knight of the Honourable Order of the Garter, Knight of the Bath, Knight Barronet, Knight Banneret, But in the statute of 31. *H.*8. *cap.*13. where it is thus enacted

Every Knight of the Garter may have three Chaplains, wherof every one may purchase license or dispensation, and receive, have, and keep two Benefices with care of souls, and they of this Order wherof I have now writ, are called Knights of the spur, and Butcher Knights. And so it is used in the statute of 13. *R.*2. *cap.*1. and in the statute of 3. *Ed.*4. *cap.*5. Hereof see *Cambden* 176. and M. *Seldens* Title of Honours. *fol.*336.

Between Doctors of the Civill law, and Knights have ever bin question for precedency and Serjeants at law, since either of them have obtained credit in the Common wealth: as may appear by the comparison that *Tully* maketh between *Mucius Maurena*, a Knight of *Rome*, and *Publius Sulpicius* a Lawyer; either of them standing for the Consulship. In his Eloquent Oration made for *Murena*, and many Disputes of *Burdell* and *Bardus*, arguing the Case to and fro: which although it be yet disputable in forreign Countries, where the civill law is in credit; yet here amongst us in *England*, it is without controversie, and so the precedency thereof is undoubtedly in the Knight and Sergeant at law, in regard of their Callings. But if they both are of equall degree of knighthood, or a Serjeant at law not Knight, then it go-

eth otherwise, as by Knighthood, by Seigniority, and by Serieantship, by the Kings Writ and degree allowed thereupon, *Dr. Ridley* 95. and to *Selden* his Titles of Honour, *fol.* 55. touching part of this Discourse, not all.

The opinion of some men hath lately bin, that Knights Lieutenants, that is to say, such as have beene Ambassadours to forraigne Princes or Judges within the Realm, may and ought to have, during their lives, precedencie above men of their owne rankes, after these their Offices expired, and many of them doe stand strongly hereupon, *& sub judice lis est*, not determined by judgement, but admitting it to be so by way of Argument in that case; yet all the Heraulds doe utterly deny that privilledge to the Maior of *London* and Aldermen, or Justice of the peace, who have their limited Jurisdiction of Magistracie confined within the compasse of their owne walls and divisions.

But touching the former, they are generall Magistrates throughout the Realme, and their imployment concerneth the whole Common-weale, and having the publike Justice of Honour of the whole estate committed unto them, do more meritoriously draw from thence a greater respect of honour, according to the generallitie of their administrations and imployments, which an inferiour and more confined Magistrate may have.

The name of a Knight is the name of Dignity, and a degree, as is the name of a Duke, Earle, &c. But in all actions he shall be named Knight, otherwise the Writ shall abate, *See Thetwall, lib.* 3. *cap.* 3.

A Knight also must be named by the name of Baptisme, and by his surname, as Sir *Ierome Bowes* Knight, but

but those of degree honourable, who are made by patent, may be named onely by their Christian name, and by their title of honour, as *John* Earle of *Clare*, and that for two causes; first, because of their solemne creations, it is notorious, (*et nomen dicitur a noscendo.*) Secondly, there is but one of that title of honour within *England*, and therefore it is certaine what person he is, but otherwise of Knights, as it is certainely knowne in *Anno* 8. *Edw.* 4. 24. *a.*

And *Prisot* Chiefe Justice saith in 32. *H.* 6. *fol.* 26. *b.* that if an Esquire be made a Knight, hee loseth his name of Esquire; but albeit a Knight may be made a Nobleman, or of any high degree, he still retaineth the name of Knight, and so ought to be stiled in the making of all Writs. *See Milles, fol.* 81.

Also, if a man do recover in an action by the name of *John Stiles* Esquire, and afterwards he is made a Knight, he must sue out his *Scire facias* by the name of Knight, *Vide Long. anno* 5. *Ed.* 4. *fol.* 19.

And this name shall not dye with him, for if hee were bound by an Obligation by the name of Gentleman or Esquire, and afterwards is made Knight and dyeth, the Plaintiffe in the Action to be brought against his Executors must name him Knight, otherwise the Writ shall abate; *Vide anno* 7. *H.* 4. 7. 6. *&* 26. *Ed.* 3. *fol.* 64. *a.*

Thomas Ormond was attainted by Parliament by the name of *Thomas Ormond* Knight, whereas hee was no Knight, he shall not forfeit any thing by that attainder, because it cannot be intended the same person, for this word Knight is parcell of his name, 21, *E.* 4. *fol.* 17. *a.*

If a Grant be made to *H.* Knight, when he is no knight, it is a void Grant. But if it be a Feofment in Fee with livery of seisin, the livery it maketh good *Vide Brook titulo Grants, 50. Anno 4. H. 6.*

If the Plaintiffe or Demandant do in his Writ name the Defendant or Tenant Esquire when he is a Knight, the Writ shall not only abate, but also the Plaintiffe or Demandant may not have another writ by *Iournier* account. *Finches book 59. Vide Cooks 6. part. de les Reports 1. b* But by the statute *Anno 1. Ed. 6. cap. 7.* It is amongst other things Enacted, that albeit any person or persons being Justices of Assise, Justices of Goal delivery, or Justices of the Peace within any of the Kings Dominions, or being in any other of the Kings Commissions whatsoever shall fortune to be made or created, Duke, Arch-Bishop, Earl, *Marquesse*, Viscount, Baron, Bishop, Knight, Justice of the one Bench or on the other, or Sergeant at Law, or Sheriffe? yet notwithstanding, he and they shall remain Justices and Commissioners, and have full power and Authority to execute the same in like manner and Form, as he or they might or ought to have done before the same.

By the statute of *Anno 5. H. 5. cap. 5.* It is enacted as followeth, That every Writ originall of accounts personall appeals, and Indictments shall be made with the addition of their Estates and Degrees, &c. and a little after it is provided, That if the said Writs of accounts personall be not according as the record and deed by the surplusage of the additions aforesaid, that for this cause they are not.

John a Stile Gent. is bound by obligation to one *A. B.* the Obliger is afterwards made Knight, the Bond is forfeited.

ited. *A. B.* by his Attorney draweth a note or title for an originall Writ, according to the defendants degree, though it vary from the originall, specially as it ought to be made by the statute: But the Cursitor mistaking did take the originall only according to such addition, as was specified in the Obligation, omitting his degree of dignity, and the Entry of *Capias alias & plures*, was according to the said originall: but in the Exigent and Proclamation, and in the Entry of it, the Defendant was named according to his degree of Dignity, upon a Writ of Errour, after judgment, doubt was, if this might be amended in another Court, then where the originall was made; and at last, it was resolved by all the Court, that the Record should be amended by the Cursitor, and made according to the Note or Title delivered unto him by the Plaintiffes Attorney. (*Cook 8. part fol. 15. b.*

It appeareth in our Book of *Law*, that the highest and lowest Dignity are universall; For as if a King of a forreign Nation come into *England* by leave of the King of this Realm (as it ought to be) in this case he shall sue and be sued in the name of a *King*, 11. *Ed.* 3. *Test Precon.* 473. So shall he sue or be sued by the Name of a Knight, wheresoever he received that degree of Dignity, 20. *Ed.* 4. 6. *H.* 6. 14. but otherwise it is, as if a Duke, Marquesse, Earl, or other Title of Honour given by any Forreign King; yea though the King by *Letters Patents* of safe conduct, do name him Duke, or by any other his forreign Title of Dignity: For experience sheweth, that Kings joyned in league together (by a certain mutuall, and as it were a Naturall power of Monarchs, according to the Law of Nations) have denized one anothers subjects and Ambassadors, graced with this title of Honour.

There

Therefore though a Knight receive his Dignitie of a Forraigne Prince, he is so to be stiled in all Legall proceedings within *England*, *Vide Cooke*, 7. *part. fol.* 16.

And Kings were wont to send their sonnes to their Neighbour Princes, to receive Knighthood at their hands, *Vide Selden*, *fol.* 331. & 308. thinking that it was more honourable to take Armes of some other, lest affection might seeme to prevent judgement, when the father gave them that honour.

Thus was our King *H.* 2. sent unto *David* King of *Scots*, and *Malcombe* also king there, sent unto our *H.* 2. and our king to the king of *Castile*, to take of them Military or Civill Armes, for the tearmes and phrase they used in that age for the making of a knight, *Vide Camden* 174. 8. *vide Selden*, *fol.* 315.

And knights in all forraigne Countries have ever place and precedencie according as they are ancient knights, which priviledge is deemed to Noblemen, for be they never so ancient in forraigne Countries, they shall goe before as Puesneys.

The degree of knighthood is not onely a Dignitie and honour to the party, for so it is termed in *Brooke*, *title Additions*, *fol.* 44. but honourable for the kingdome; and therefore it hath been an ancient Prerogative of the kings of this Realm, at their pleasure to compell men of worth to take upon them this degree upon the payment of a Fine, as appeareth in *Ann.* 7. *H.* 6. 15. *Fitzh. Abridg. tit. Im.* 13. and by the Statute, *a.* 1. *Ed.* 2. *de militibus*. But we see by experience in these daies, that none are compelled thereunto, and that is the reason; wherefore if the Plaintiffe be made knight hanging the Writ it shall abate, because he hath changed his name

name, and that by his owne act, *Vide Cooke 7. part f. 27. 1. part 10. b. 1, Ed. 6. cap. 7.* contrary.

And for that cause also by the common Law not only the king, but every Lord of a Manor ought to have of every of his tenants a reasonable fine to make his eldest son knight, *Vide Bracton, fol. 36. b.* and all lands are subject to these aides, except onely ancient Demeasnes, and grand and petty serjeantly tenures, as the Law hath been anciently delivered, *Vide Fitzh. Nat. bre. f. 83. a.* and *Selden, f. 13.* where it is also said, one that wrote a little after the statute of *West*, the first allowes as a good barre to the avowry for the tenant to plead, that the father himself is no knight, so that one not knighted cannot claime the aide of his own Tenants, *Briton de Prises de Avers.*

And it was not at the liberty of the Lord to make more or lesse of his Tenants, by the common Law in this case but by the statute at *Westminster, 1. cap. 35.* it is put into certainty, *viz.* forasmuch as before this time reasonable and to make one son knight, or to marry his daughter was never put into certainty, nor how much should be taken at that time, whereby some levyed unreasonable aide, and more often then seemed necessary whereby the people were sore grieved.

And it is therefore provided, that from henceforth a whole knights fee be taken but 20. s. and of more, more, and of lesse, lesse, after that rate, and that none shall levie such aide to make his son knight, untill the sonne be 15. yeares of age, nor to marry his daughter untill she be of the age of 7. yeares and of that there shall be mention made in the kings Writs, formed on the same if any one will demand it, and if it happen that the Father after

after he had leavied any such aid of his Tenants, did before he hath marryed his Daughter, the Executors of the Father shall be bound to the daughter, for so much as the Father received for the Aid. And if the Fathers goods be not sufficient, his heir shall be charged therwith unto the daughter, and this Heir is so incident, that although the Lord do confirm unto the *Tenant* to hold by fealty and certain Rent, and release unto him all other services and demands; yet he shall have the aid to make his eldest Son Knight, *Anno* 40. *E.* 3. *f.* 22. *Finches book* 24. but the King was not bound by the statute beforementioned, because the King was not named in that statute, and therefore by the statute 25. *E.* 3. *cap.* 11. The Kings aids were brought to a like value, *Selden fol.* 330.

The intention of the Law, is, that an heir within the age of 21. years is not able to do Knight-service, till his full age of 21. years, *Littleton lib.* 2. *cap* 4. *f.* 22.

But such a presumption of Law doth give place to judgment and proof to the contrary, as *Bracton* saith. *Sabilitur presumptioni donec probetur in contrarium.*

And therfore the King who is the Sovereign and Supream Judge of Chivalry, hath dubbed him Knight, he by this hath judged him able to do him Knight-service, and all men concluded not to say to the contrary, & therfore such an heir being made Knight, either in the life of his Father, or afterwards during his minority, shall be out of ward and custody, both for *Lands*, and for his body, or marriage, by the ancient common Law; by reason also, that the Honour of Knight-hood is so great, that it is not to be holden under by any: yet if the King do create any such an Heir within Age, a Duke, or Marquesse, Earl, Count, Viscount, or Baron, by this he shall be out of ward

and

d custody, both for his Land and for his body, *vide* ook 6 part 74, a.

And therfore it is provided by the statute of *Magna* arta, *Cap.* 3. *Ita tamen quod si ipse dum infra ætatem fue-* t, *fiat miles nihil ominus terra remaneat in custodia do-* inorum *suorum*. So that although such an heir within age made a Knight, and therby to this purpose is estee- d of full age; yet the *Laws* shall remain in the custo- of the *Lord* till his age of 21. years by the provision the said Act. *Quere*, if the son and heir of the Tenant the *King* by *Knight*-service, &c. be made *Knight* in *ris* by the *King* of *France*? whether he shall be out of ardship after the death of his Father or no, for therby is a *Knight* in *England*, *Cook*. 7. *par*. *a*. 2. *E*. 4. *fo*. *b*. *tamen* *de Cooks* 6. *par*. 74. *b*. Mention is only made of *Knights*, ade by the *King* himself, or by his Lieutenants in *Ire-* nd.

But when the *King* doth make an heir apparent with- age of a Tenant by *Knights* service, a *Knight* in the e time of his Ancestor, and after the death of his An- stor, the said heir being within age, shall in this case be t of ward, and shall pay no value for his marriage, nei- er shall the *Lord* have the custody of the Land; for in at case by the making of him *Knight* in the life of his ncestor, he is made of ful age: so that when his Ancestor yeth, no Interest in the body nor in the *Land* shall in- st, but the *Knight* may tender his livery, as if he were full age, and in this case the *King* shall have *primer* *sin*, as if he had bin 21. years old at the time of the de- ase of his Ancestor, and not otherwise. *Cooks* 8. *part*, *fol*. 71. *a*. for the statute of *Magna Charta* doth not extend to it. For the purpose of it doth extend only when the heir

Heir is in ward, *infra etatem* is made Knight, then *remanet terra in Custodia*. But when the Heir is in ward, being *Knight* in the life of his Ancestor, then the Custody cannot remain or continue, which had never any inception or essence.

Also when the Heir after the death of his Ancestor within age is made a *Knight*, if after tender made unto him he within Age doth marry else-where; yet he shall not pay the Forfeiture of his Marriage: For by the making of him *Knight*, he is out of ward and custody of his Lord; for then he ought to be *sui juris*, and may imploy himself in Feats of Arms for defence of the Realm, and therefore may not be within the Custody or keeping of another, but none shall pay any Forfeiture, but when after refusall he doth marry himself during the time when he is under the Custody or keeping of his Lord.

And this doth appear by the statute of *Merton*, cap. 6. *Si maritaverit sine licentia Domini sui ut ei auferat Maritagium suum, &c.* Which Words cannot be understood, when he is out of Ward and Custody, no more then when he is married after his age of one and twenty years.

Note, hereby may appear that the King may present his Grant or other Lords of the double value by *Knighthood*; yet in such a Case presently after the Heir is made *Knight*, after the Death of his Ancestour, the Lord may have a Writ *de valore Maritii*, for the single *Cook* 6. *part* 74. and 75. and note *Plowden f.* 267.

Also

Also by the ancient Common-law of this Realm, if a Villain be be made a *Knight*, he is immediatly enfranchized, *Olanvile lib.* 5. *cap.* 5. *f.* 27. and *Bracton, lib.* 4. *cap.* 198. *b.*

Or if a *Ribauld* or man of base Birth and Condition had stracken a *Knight* he should by the ancient Laws have lost his hand wherwith he offended, *Britton* 19. in his appeales.

But in *France* it was judged antiently, that when a Lord of a villain had *Knighted* his villain, being a Gentleman, he became Free, and had the Honor lawfully, but if another Lord had *Knighted* him, nothing had bin wrought by it: For none could mannue him, but the Lord, and till Mannumission or till *Knighthood* had civill Freedome for his ground, he was not capable of it, except by the *King* only, *vide Seldens* Titles of Honour; *fol.* 318.

It was enacted in Parliament, *Anno* 6. *Ioh. Regis in hec verba, Rex vicecom. &c. Sciatis quod consensum, est cum assensu Archieporum, Comit. Baronium. & omnium fidelium urum Angl. quod Novem milites per totam Angl. invenient decimum militem bene paratum equis & Armis ad defensionem Regni nostri vide Cook* before his ninth Book. *b.*

There hath ever bin and still is great use of the service of Knights, even in civil affairs, and concerning matters of Iustice, as in a Writ of right, which is the highest writ in the law, for the trials of titles touching the inheritance of lands, the Tenant is at election to have his tryall by a grand assize, or else by battle; if by the great assize, then *Vat de magna assiza Elegenda* shall be taken out. And up-

upon the return of that Writ those four Knights nominated, must appear *Gladiis cinctis Dyer*, 79. f. 103.

If the Tenant make his election by Battle, each parties are to choose their Champions, and the Court shall award the Battle, and the Champions shall be a mainprise, and sworn to perform the Battle at a certain day in the Term, and *idem dies* shall be given to the parties, at which day and place, a List shall be made in an even and plain ground, their Squadrant, that is to say, every square 60. foot, East, West, North, and South, and the place of Court for the Justices of the Common Pleas without, and upon the Lists furnished with the same Cloths, which belong to their Court at *Westminster*, and a Barre there shall be made for the Sergeants at Law, and the Robes of the Justices and Sergeants shall be of Scarlet, with their Coifes, as it was *Anno* 13. *Eliz.* and then was made *Proclamation* with three O. yes, &c. and the Demandant was first solemnly demanded, and did not appear: Wherupon the Mainprise of the Champion was demanded to bring forth the Champion of the Demandant, who came to the place apparelled with red Sandalls upon his black Armour, bare legged from the knee downwards, and bare headed, and bare Arms to the Elbowes, being brought in by a Knight, namely by Sir *Ieromie Bowes*, who carryed a Red Batton of an Ell long, typt with horn, and a Yeoman carrying the Target made of double Leather, and they were brought in at the North side of the *Lists*, and went about the sides of the *Lists*, and then came towards the Bar before the Justices, with their solemn Congies, and there was he made to stay on the Southside of the place, being the right side of the Court.

And

And after that the other Champion was brought in like manner at the South-side of the lists with like congies, by the hands of Sir *Henry Cheney*, Knight, and was placed on the Northside of the Barre, and two Serjeants, being of the counsell of each party, in the midst betweene them; this done the Demandant was solemnly called againe, and appeared not, but made default, *Butham Serjeant* for the Tennant prayed the Court to record the non-suite, *quod factum fuit*, and then *Dyer* chiefe Iustice reciting the Writ and Count and issue joyned upon the battaile, and the oath of the Champion to performe it, and the prefixion of his day and place, did give Iudgement against the Demandant, and that the Tennant should have the Land to him, and to his heires for ever.

And the Demandant, and his pledges, *de prosequendo in misericordia Reginæ*, and afterwards solemne Proclamation was made, that the Champions, and all other there present, which were by estimation four thousand persons, might depart in the peace of God, & the Queen, *Et sic fecerunt magna clamore, vivat Regina, vid: Dy. 30.*

Also if false Iudgement bee given in the county in the Sheriffes Court, then the Writ shall be directed unto the same Sheriffe, and the writ shall bee thus, *viz. Henricus &c. vic' Lincoln' saltum si Jo: Afec' tunc in pleno Comitat. tuo recordari fac' loquar: que est in eodem Comitatu tuo per bre' nostri de recto inter Iohannem a pretend' & W.B. tenent' de vno messuagio & centum acres terra cum pertinend' in Com' unde idem Io: acqueritur? falsum sibi factum fuisse Iudicium in eodem & recordo illud litter' coram Iustic' nostris apud Westm' tali die sub sigillo tuo, et legales mi-*

lites ejusdem Com' & illis qui record' illi interfuerunt & som' per bonos somonon' pred' B. quod tunc et ibi audiatur record um illud et habeas ibi nom' nostra quatuor militum et hoc bre' Fitz.H. Nat.br' *et ibid.* and these foure must be Knights indeed.

Also the Iustices upon consideration of the usuall words in every Writ of *Venire facias*, which by *precipimus tibi quod venire facias coram, &c.* 12 *tam milites quam alios liberos et legales homines, &c.* Say that these words, *tam milites* were not at the first put into the Writ without effect, *Plowden, fol.* 117. *b.* For it seemeth that in *duobus illis*, some Knights were returned upon every *Venire facias*. By the Statute of *Magna Charta, cap.* 12. It is ordained, that Assizes of *Novell disseisin*, and *Mort. Dancestor* should not be taken any where, but within the Counties where they happen.

If a Tennant doe lay an essoyne, *de malo lecti*, he may have a Writ out of the Chancery, to warrant it, by which it shall bee commanded to foure Knights to view him, and if they see him sicke, then they are to give him day to the end of a yeare, and a day, *Finches* booke 87. *b.* note the Register *fol.* 117. *b. quod coercentur non obligatur nisi sit miles, &c. juxta formam statut' Westm.* 1. *cap.* 10. & *Stamfords pleas, fol.* 40.

It is a received opinion, that Knights are excused from attendance at *Leets, Britton*, 29. and 36. is cited to p,roveit; and by a large understanding of the intent and meaning of the Statute of *Marlbr. cap.* 10. For the ancient Common-law hath such respect unto the degree of knight-hood, that they or their eldest sonnes, were not compellable to find pledges in the

Leet,

Leet, or Law-dayes: For the Statute of *Marlbr.* aforesaid, was not *introductive legis*, For it was before the Conquest, *vide* the Lord Chancellors speech, *fol.* 77. and the Common-law by this Statute is not alleadged; and to that effect, *vide Finches* Booke, *fol.* 132. *a.* and *Bro. tit. fol.* 39. and to the booke called the Mirrour of Iustice, mentioned in the Preface to *Cookes* ninth part: it is said, that Knights are excepted, and so it appeares, that the practise, was as well before, as immediatly after, the making of that Statute of *Marlb.* and interpretation *practica*, a principle way and forme of interpretation of Lawes.

The Lord Chancellors speech in the case of *Post-nati*, 34. and in Divinity, *Propter sanctorum est interpretes præceptorum, ibidem* 66. But a Knight, and superiours, and inferiours, are bound by Law to take notice of the proceedings there: For if a man be out-lawed for felony at a Countie Court, and one of the same County not knowing of the felony doth receive him hee is accessary, 13. & 14. *Eliz. Dyer*, 355. *a. et Stamford* 96. *et* 41. *Eliz.*

Also when the King doth summon to his Parliament, Writs shall bee sent to the Sheriffe, to make choice of Knights for every shire; in this forme, *Rex vic' &c. salutem quia*

nostri Consilii pro quibusdam arduis & urgentibus negotiis nos statum et defensionem regni nostri Anglia & Ecclesiæ Anglicanæ concernen' quoddam Parliamentum nostrum apud civitatem nostram Westm. 12. *die Novembr. prox' futur' teneri ordinavimus et ibidem prefatis magnatibus Proceribus dom' regni nostri colloquium habere et tractare tibi precipimus firmiter*

injungentis quod facta proclamatione in proximo tuo post receptionem hujus litteris nostris tenen' die & loco prædict' duos milites gladiis cinctis magis idoneos, & discret' com' prædict', &c. & electionem illam in distincte & aperte sub sigillo tuo, & sub sigillis eorum qui electioni illi interfuerint nobis in Cancellaria nostra, & locum certifices indilate; Cromptons Courts, 1. b. vide Stat. de An. 23. H. 6. cap. 15. Where amongst other things it is enacted that the Knights of the Shires for Parliaments, hereafter to bee chosen shall bee naturall Knights of the same County, for the which they shall bee so chosen, or otherwise such naturall Esquiers or Gentlemen being of the same County as shall bee able to bee Knights; *vide Plowden, fol.* 121.

Peeres are by intendment of Law, sufficient of Freehold, and that is one of the reasons, whereof no *capias* or exigent lyeth against him for debt or trespas; but the Law hath not that opinion of the Knights sufficiency of Freehold, for hee may bee a Knight *Sans terre*; therefore 26. *H.* 8. 7. *a. Brooke Exigent* 72. and then hee is to bee returned of any jury or inquest, howsoever hee may bee worthy, and sufficient to serve the Common-wealth in Marshall affaires.

The wives and widdowes of Knights in legall proceedings and in Courts of Iustice have not the titles of Ladies as the wives or widdowes of Noblemen have, but that title by the curteous speech of *England*.

And if in any action they be not called Ladies, for that

that cauſe, the writ ſhall not abate for that ſurpluſage, *Anno* 8. *H.* 6. 10. becauſe *Domina* is generally as men *Domini*. ſo women after 14. yeares of age called *Domina*, Ladies or Dames, and which were antiently navigeable women were called *Domina*, and by our *Engliſh* Poets, Dames; Firſt, *Domina* is often for women generally, as ſpeciall Honour for that ſex, not being out of uſe with us at this day, nor with the *French*; as alſo amongſt the *Italians*, *Domina* for them is familiar, *vide Seldens* title of Honour, 1. part *fol.* 53. But if ſhee bee named Counteſſe or Baroneſſe ſhall abate the writ 14. *H.* 6. 2. And *Cookes* 6. part, *des reports*, 53. *b.*

By the ſtatute of *Magna charta*, *cap.* 21. Knights are free from cart taking, that no Demeaſne cart of them ſhall bee taken.

By the ſtatute of 1. *Iac. cap.* 27. It ſeemeth, that Knights may keepe Greyhounds, and ſetting Dogges, or Nets to take Pheaſants or Partridges in; though they cannot diſpence 10. l. *per annum* nor bee worth 200. l. For the expreſſe words of that ſtatute are, that all the Sons of Knights are excepted.

Obſervations concerning a Knight Batchelour.

A Knight Batchelour cannot claime the priviledge, that Knights have from cart-taking, by *Magna charta*, *cap.* 21.

A Knight Batchelours Sonne cannot keepe a Grey-

hound, because hee is not within the statute of, 1. *Iac. cap.* 27. unlesse hee have 10. l. Lands, &c.

Quere, whether the Knight Batchelours addition, doe abate any action, &c.

If one bee Knighted in the life time of his Father, it frees him of wardship, but *è contrario* of a Knight Batchelour.

Knights are excused from attendance at Leets, but so are not Knights Batchelours.

Of Esquires.

ALthough by the Civill Law, there bee no Gentlemen of title, under Knights, but all the rest went under the name of people, yet with us, there are in the ranke who have names of preheminence, whereby they are in degree above the rest; as Esquiers and Gentlemen, all which give ensignes or coates of armes, and thereby are distinguished from the meaner sort of people, in which respect (*Bartol. Tract. de Insignis*) calleth Noble, but of a weake Nobility, for it hath no further prerogative in it, then that it makes them differ from the baser sort of people.

Of these two sort of Gentlemen, with us, the Esquire hath the *Prerogative* priority, but it seemes, if an Esquire bee named Gentleman, or a Gentleman bee named Esquire, it is no vice in legall proceedings, *Brooke additions*, 44.

Esquire seemeth by the Common name, wee give him

him in Latine, to have had his originall, either for that hee carried the armour of the King, Duke, or other great personage, as wee see not onely in the Scriptures, as *Saul* and *Jonathan* had their armour bearers, but in Poets and other Prophane stories, *Patroclus* was *Achilles* his armour bearer, and *Clitus* great *Alexanders*, whereupon some write, that hee, whom wee call *Armiger* in Latine, is a Foot-man, that with a speare, shield, or head peece followeth an armed Knight in battaile, or rather as some others suppose; It is the Foot-man himselfe armed in the field; but howsoever the word bee taken, this is sure, those men were of good accompt in old time, as those who wonne themselves credit out of warre, and so their estimation remained unto their posterity; And as those were in time before, so are these, which are in our dayes, as descending for the most part from their worthy Ancestours, and our bookes of the Common Law doe distinguish them thus, that is to say.

Knight-hood is a dignity, but Esquires and Gentlemen are but names of worship, *An.* 14. *H.* 5. And *Brooke* in his *Abridgement* in that case, *Tit nosmer de dignity*, 33. saith, to bee a Knight *est Gradus*, but to bee an Esquire or Gentleman *est Status*. For *Gradus continet Statum in se, & non è contrari, vide Thesoal.* 105. concerning this word (worshipfull,) read in the printed booke, Master *Seldens* title of honour, *Prima pars fol.* 124. *& sequentia.*

In time past, every Knight had two of these waiting upon him, they carried his morion and shield, and as inseperable Companions, they stuck close to

him because of the said Knight their Lord, they had certaine lands in elcuage, like as had the Knight himselfe, who held them of the King by Knights service.

The beginning of armes in *Europe* amongst Christians is supposed from the holy warres, for the Turke paint them not, and so with us about *H.* 3. They became more hereditarily established, and when the Prince enabled any, hee gave them the particuler of his bearing in *Blason*, Master *Selden* in his Preface *fol.* 5. where you may also see an example in the Raigne of *R.* 2.

But now adayes there are five distinct sorts of these, for those whom I have spoken already, bee now no more in any request, the principall Esquires at this day, are accompted those, that are elected Esquires for the Princes body. The next unto them be Knights eldest Sonnes successively; In a third place are reputed younger Sonnes of the eldest Sonnes of Barons, and of other Nobles of higher estate; and when such Heires Males failes, together with them also the title faileth.

In a fourth ranke are reckoned those, unto whom the King himselfe together with the title giveth armes, or createth Esquires by putting about their necks a silver Collar of S. S. and in former times upon their heeles a paire of white spurres silvered, whereupon at this day in the West part of the Kingdome, they are called white spurres, and to the first begotten Sonne onely of these doth this title belong.

In a fift and last place be those ranked, and taken for Esquires,

Esquires, who have any superiour publike office in the Common-wealth, or serve the Prince in any worshipfull calling, at the Coronations of Kings and Queenes, Knights of the Bathare made men of worth, and honourable blood, to the end that their Majesties may bee accompanied in their owne honours, every of which Knight having two Gentlemen to attend him in that Ceremonie, who are ever after enabled by that service to be Esquires during their lives,

But this name of Esquire, which in ancient time was a name of charge and office only, first crept in amongst other titles of dignity and worship (so farre as ever I could observe) In the raigne of *R.2. Camden fol.176. vide* Sir *Thomas Smith de republica, Anglorum fo.*26. where saith he, that the Esquire is no distinct order of the Common-wealth, and hereof see the statute of *An.16. R.2. cap* 4. and *an. ejusdem Regis, cap.*2.

A Serjeant of the Kitchin in the Kings house, may beare the name and addition of Cooke, or of Esquire, by the opinion of *Newton.* But *Jenny* said, that such officers of the Kings House-hold would be much agreved, if they should be named by their trade or occupation: *Paston* peradventure saith in that case, the writ may be good, because of the Statute, *Anno* 1. *H.* 5. cap 5. For the Statute is, That hee shall be named of the Towne, degree, state, condition, or mysterie: And when hee was named, *Cooke* hee observed the Statute: For hee hath named him by his name of mysterie, and yet hee may be in that case an Esquire, and a Cooke, 14. *H.6. fol.*15.

If a man be an Esquire, or Gentleman only by of-

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fice, and loſe his office, hee then doth loſe his gentry, alſo, 26. *H.6. Eſtoper* 47.

Note, Eſquire or Gentleman, are but additions to ſatisfie the ſaid Statute: But names of dignity are parcell of the name, *vide Bro:* additions, 58. 21. *E.* 4. 71. *b.* and therefore if a *precipe quod reddat* bee brought againſt *A. B.* yeoman, and Recovery is had, whereas the Tennant was a Gentleman, yet the Recovery is good: The ſame Law where a Releaſe is made to *A. B.* yeoman, who is a Gentleman, and where addition is given by the Party, where it needeth not by the law (being no dignity) it is void. ſo if a deed be made to a Gentleman by the name of a yeoman: For there is a great difference betweene deeds and writs, *Cooks 6. part. a.*

If an Eſquire be to be arraigned of high treaſon, he may and ought to be tryed, *Per probos & legales homines* that may diſpend 40. s. *per An.* of free-hold, or bee a 100. l. in value in goods, and ſo the Statute that doth ſpeake of men of his condition hath alwayes beene put in ure, *Dyer 99. b.*

The King may make an Eſquire by Patent in theſe words, *viz. creamus te Armigerum, &c.* Note Mr. *Selden*, his Preface to his titles of honour 5. *b* and 313.

By the Statute of 21. *H.* 8. *cap.* 13. It is amongſt other things enacted, That the brethren and ſonnes borne in wed-locke of every Knight, being ſpirituall men, may every of them purchaſe lycenſe and diſpenſation, and receive, take, and keepe two parſonages, or benefices with cure of ſoules.

The ſonne or ſonnes of any Knight is priviledged to keepe

keep a Grey hound, or setting doge, or nets to take Peasants, or Patridges in, though he cannot dispend x.l in his own right, or in his wives right of an estate of inheritance, or of the value of 30.l. of estate for life, 1. *Jac. cap.* 17.

The Definition of Gentry, or civill Nobility.

GEnerous seemeth to be made of two words, the one French, *Gentile honestum, vel honesto natus*; the other Saxon (*mon*) as if you would say, a man well borne, and under this name are all comprised, that are above yeoman, so that Nobles are truly called Gentlemen, by the course and custome of *England*.

Nobility, is either *Major*, or *Minor*; *Major* containes all titles, and degrees from Knights upwards, *Minor* from all Barons downewards, Gentlemen have their beginning, either of blood, as that they are borne of worshipfull Parents, or that they had expedited something worthy in peace or warre, whereby they deserve to have armes, and to be accounted Gentlemen.

But in these dayes he is a Gentleman, who is so commonly taken, and repured, Doctor *Ridley* 96. And Whosoever studieth in the Vniversities, who professeth the liberall sciences, and to be short, who can live idly, and without manuall labour, and will beare the Port, charge, and countenance of a Gentleman, he shall bee called Master: For that is the title that men give to Esquires, and other Gentlemen: For true it is with us, as one said; *Tanti erit alius quanti tibi fueris*: and if need be, a King of Heralds shall give him for money armes

armes newly made, and invented with the Creast and all: the title whereof shall pretend to have him found by the said Herauld, in the perusing and viewing of old Registers, where his ancestors in time past had beene recorded to beare the same: or if he will doe it more truly, and of better faith, hee will write, that for the merits of, and certaine qualities that he doth see in him, and for sundry noble acts which he hath performed, hee by the authority which he hath, as King of Heralds in his Province, and of armes, giveth unto him and his heires, these and these heroicall bearings in arms, *vide Smith de Republic. Anglorum.*

But some men of Iudgement make doubt and question, whether this manner of making Gentlemen is to be allowed or no: and it may seeme, that it is not amisse: For first the Province looseth nothing by it, as hee should doe, if hee were in *France.* Reade *Fortescue, fol.* 82.

For the Yeoman or Husbandman is no more subject to toyle, or tax in *England*, then Gentlemen, nay in every payment to the King, the Gentleman is more charged, which he beareth the more gladlier, and dare not gainesay, to save and keepe his honour and reputation, in any shew, or muster, or other particular charge of the Towne where he is, he must open his purse wider, and augment his proportion above others, or else he doth diminish his honour, and reputation: as for their outward shew: a Gentleman, if he will bee accounted, he must goe like a Gentleman.

And if he be called to the warres, hee must, and will whatsoever it cost him, array himselfe, and arme his body according to the vocation that he pretendeth, hee must

must also shew a more manlike courage and tokens of better education; higher stomacke, and bountifuller liberality then others, and keepe about him idle servants, who shall doe nothing but waite upon him, so that no man hath hurt by it, but himself, who hereby (perchance) will beare a bigger sayle, then he is wel able to maintain.

For as touching the policy and government of the Common wealth, it is not those that have to doe with it, which will magnifie themselves, and goe in higher Buskins then their estate, but they who are to be appointed, are persons tryed and well knowne.

In 25. *Eliz.* the case was, that whereas it is requited by the Statutes of 1. *H.* 5. *cap.* 5. That in every writ originall, &c, in which an exigent shall be awarded, that additions should bee given unto the Defendant of their estate, and degree, &c. and the case was that one was a yeoman by his birth, and yet commonly called and reputed a Gentleman; and yet it was adjudged, that a writ may bee brought against him with the addition of Gentleman: For so much as the intention of the act, is to have such a name given, by which hee may be knowne, this is sufficient to satisfie the law, and the act of Parliament: For *nomen dicitur a noscendo, quia naritiam facit*, Cook. 6. part. 65. and 67. *a.*

But if a Gentleman bee sued by addition of Husbandman he may say hee is a Gentleman, and demand judgement of the Writ without saying (and not husbandman:) For a Gentleman may be a husbandman, but hee shall be sued by his addition most worthy, *An.* 14. *H.* 6. *b.* 15. For a Gentleman of what estate soever hee be, although hee goe to plough, and by common Law, though he have nothing in his purse; yet

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is a Gentleman, and shall not be named in legall proceedings, *Labourer Long*, 5. *E.* 4 33. 14. *H.* 6. *fol.* 15, *a. Dyer.*

If a Gentleman bee bound an aprentice to a Merchant, or else, &c. he hath not thereby lost his degree of Gentry, *Estopell* 47.

But if a Recovery be had against a Gentleman by the name of yeoman, in which case no addition is necessary, then it is no errour, *Brooke Cron* 83. *additum* 38. So if any deed or obligation be made unto him by the name of yeoman.

If a Capias goo against *A. B.* yeoman, and if the Sheriffe take *A. B.* Gentleman, an action of false imprisonment lyeth against the Sheriffe, *vide An.* 21. *E.* 4. *fol.* 71. *b.*

But if a yeoman be indicted: and *A. B.* Gentleman being the same man bee produced it is good, *Kelway* 58. *b.*

Gentlewomen have the same additions.
vide Dyer, 88.

IF one be a Gentleman by office, and looseth his office, then he doth also lose his gentility, 28. *H.* 6. 2. *Estopel* 47.

By the Statute of 5. *Eliz. cap* 4. intituled an act touching divers orders for Artificers, Labourers, Servants of husbandry, and apprentices; amongst other things, It is enacted, that a Gentleman borne, &c. shall not be compelled to serve in husbandry.

If any Faulcon be lost, and is found, it shall be brought to the Sheriffe, who must make Proclamation, and if the owner come not within foure moneths, then if the Finder bee a simple man, the Sheriffe may keepe

keepe the Hawke, making agreement with him that tooke it, but if hee be a Gentleman, and of estate to have, and keepe a Faulcon, then the Sheriffe ought to deliver unto him the Faulcon, taking of him reasonable costs, for the time that hee had him in custody, *An.* 34. *E.* 3. *cap.* 21. and *anno* 37. *E.* 3. *cap.* 19.

A Commission is made to keepe children into Cathedrall Churches, where children be instructed to sing for the furnishing of the Kings Chappell: These generall words by construction of Law have a reasonable intendment, *viz.* That such children who be brought up and taught to sing, to seeke and sustaine their living by it; Those may bee taken for the Kings service, and it shall be a good preferment unto them to serve the King in his Chappell; but the sonnes of Gentlemen, or any other that are taught to sing for their ornament, delight or recreation, and not thereby to seeke their living, may not bee taken against their will, or the consent of their Parents and friends, and so it was resolved by the two chiefe Iustices, and all the Court of Star-chamber, *anno* 43. *Eliz.* in the case of one *Evans*, who had by colour of such Letters Patents taken the sonne of one *Clifton* a Gentleman of quality in *Norfolke*, who was taught to sing for his recreation, which *Evans* was for the same offence grievously punished. *Cook*, 8. *Reports fol.* 46.

And to the end, it may withall appeare what degrees of Nobility and Gentry there were in this Realme, before the comming in of the *Normans*, and by what merits men might ascend, and bee promoted to the same; I will shew you the copie of an English or Saxon antiquity, which you may reade in *Lamberts*

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Peramulation of *Kent*, *fol.* 364. and Englished thus, *viz.*

It was sometimes in the English Lawes, that the people and lawes were in reputation, then were the wisest of the people, worship-worthy in his degree, Earle and Chorle, Theyne, and under Theyne: and if a Chorle so thrived, that had fully five hides of land of his owne, a Church, and a Kitchin, a Bel-house, and a Gate, a seat, a severall office in the Kings Hall; then was hee from thenceforth the Theines right worthy, and if a Theyne so thrived, that hee served the King on his message, on his journey-ward in his household. if he then had a Theyne, which him followed, whoto the Kings experience had five hides, and in the Kings Pallace his Lord had served, and thrice with his errand had gone to the King, hee might afterwards with his forecoath, his Lords part play at need; and if a Theyne that hee became an Earle, then was hee from henceforth the Theynes right worthy; and if a Scholler so thrived through learning, that he had degree, and served Christ, he was thenceforth of dignity and peace so much worthy as thereunto belonged; unlesse hee forfeited, so that he, the use of his degree ne might, *Mids* 72. Nobility, Politicall, and Civill.

It is observeable, that the Saxons out of all these trades of life, which be conversant in gaine admitted to the state of Gentry, such onely as increated by honest husbandry, or plentifull merchandize; of the first of which *Cicero* affirmeth, that there is nothing meeter for a Free borne man; and of the other that is prayse-worthy also, if at the length being satisfied with gaine, as it hath often come from the sea to the haven,

haven, so it changeth from the havens into lands and possessions; and therefore, whereas *Gervasius Tilburiensis* in his observations of the Exchequer, accounting it an abasing for a Gentleman to occupy *Publicum mercimonium*, common buying and selling, it ought to bee referred to the other two parts of merchandize, that is, to negotiation which is retayling or keeping of an open shop, and to invention which is exercise mercery, or some call it to play the Chapman, and not to navigation, which (as you see) is the onely laudable part of all buying and selling.

And againe, whereas by the Statute of *Magna charta, cap* 6. and *Merton cap.* 7. It was a discouragement for a ward in Chivalry, which in old time, was as much as to say, a Gentleman to bee married to the Daughter of a Burgesse, I thinke it ought to bee restrained to such onely as professed handy crafts, or those baser arts of buying and selling, to get their living by. But this matter I leave to the Heraulds.

And in this place, it may bee remembred, that King *Hen.* 8. thought it no disparegement unto him, when hee tooke *Anne*, Daughter of *Thomas Bullen*, sometimes Major of *London* to his wife.

The Statute of *Westminster*, 2. *cap.* 1. which was made, *Anno* 13. *E.* 1. was procured, especially, and purposely at the desire of Gentlemen for the preservation of their lands and hereditaments, together with their surnames and faculties, and therefore, one called this Statute *Gentilitium municipale*, and the Lawyers call it, *Ius talliatum & taliabile.*

The children onely of Gentlemen were wont

to bee admitted into the Innes of Court, and thereby it came to passe, that there was scant any man found within the Realme skilfull and cunning in the Lawes except hee were a Gentleman borne, and came of a good house; For they, more then any kind of men, have a speciall care to their Nobility, and to the preservation of their honour and fame; for in those Innes of Court are vertue studied, and vices exiled; for that for the endowment of vertue, and abandoning of vice, Knights and Barons with other States, and Noblemen of the Realme, place their Children in these Innes, though they desire not to have them learned in the Lawes, nor to live by the practice thereof, but onely upon their Fathers allowance, *vide Fortescue de laudibus Anglorum, cap.* 49.

But the Statute of *An.* 3 *Iac. cap.* 4. amongst other things it is enacted, that if any Gentleman or Person of high degree, shall hereafter goe or passe voluntarily out of this Realme to serve any forraine Prince, State, or Potentate, before that hee or they shall become bounden with two sureties, as shall bee allowed of the Officers, by that act limited to take the said bond unto the King his Heires and Successours in the summe of twenty pounds of currant *English* money at the least, with condition to the effect following; hee shall bee a felon. (*viz.*) That if the within Bounden, &c. shall not at any time then after bee reconciled to the Pope, or Sea of *Rome*, nor shall enter into, or consent unto any practise, plot, or conspiracy whatsoever against the Kings Majesty, his Heires, and Successours, or any of his, or their estate or estates, Realmes and Dominions, but shall with-

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in convenient time after knowledge thereof had, revealed and disclosed to the Kings Majesty, his Heires and Successours, or some of the Lords of his, or their Privy Counsell, all such practises, plots, and conspiracies, and that then the said obligation to bee void, &c.

Of Yeomen.

THe Yeomanry or Common people, for they bee called of the *Saxon* word Zemen, which doth signifie Common, who have some lands of their owne to live upon; for a carve of land, or Plow land, was in antient times of the yearely value of five Nobles, and this was the living of a sober man, or Yeoman; *Cookes 9.* part *fol. 124. b.* But in our Lawes, they are called *Legales homines*; a word very familiar in writs and inquests, and by divers Statutes, it hath beene enacted, that none should passe in any inquest, unlesse they had fourty shillings freehold in yearely revennes, which maketh, if the most value were taken to the proportion of moneyes above six pounds of our currant money at this present; Sir *Thomas Smith fol.* 30. and by the Statute of 27. *Eliz. cap. 6.* Iurours must have 4. l. in lands.

In the end of the Statute, 23. *H. 6. cap.* 15. concerning the election of Knights for the Parliament, it is expressely provided, that no man shall bee such Knight, which standeth in the degree of a Yeoman.

It appeareth in *Lamberts* perambulation of *Kent*, that this *Saxon* word *Telphinerman* was given to the Theine or Gentleman, because his life was valued at twelve hundred shillings, and in those dayes, the lives of all sorts of men, were rated at certaine summes of money, *Telphinerman*, to the Churle or Yeoman, because the price of his head was taxed at two hundred shillings; which thing (if it were expressely set forth in sundry old Lawes yet extant,) might well enough bee found in the *Etimologie* of the words themselves, the one called a Twelve hund, as if it were a twelfe hundred.

And in this estate, they please themselves, and joy exceedingly, insomuch as a man may find sundry Yeomen, although otherwise comparable for wealth with many of the Gentle sort that will not yet for that, change their condition, nor desire to bee apparelled with the title of Gentry. *Lamberts* estate of *Kent*, names the Yeomanry of *Kent*, when a Yeoman of 1000. l. yearely revenues, and refused any other superiour title, but these are now no more heard of, &c.

By the Common Law as may appeare in *An.* 1. *E.* 2. *De militibus, & in An.* 7. *H.* 6. 15. men that had lands of the yearely value of 28. l. were compellable at the Kings pleasure to take upon them the order of Knight-hood, and upon summons, there came a Yeoman who might dispend 100. markes *per annum*, and the Court was in doubt, how they might put him of; and at last, hee was wayved in, because hee did come the second day, *An.* 7. *H.* 6. *fol.* 15. *a.*

By this sort of men, the triall of causes in the Countrey

troy proceedeth ordinarily; for of them, there are greater number in *England*, then in any other place, and they also of a more plentifull livelyhood, and therefore it cometh that men of this Country are more apt and fit to discerne in doubtfull causes of great examinations and trials, then are men wholly given to moyling in the ground, to whom the rurall exercise engendreth rudenesse of wit and mind, and many Franklins and Yeomen there are, to neere adjoyning as you may make a Iury with little difficulty; For there bee many of them, which bee able to spend 100. l. a yeare, *vide Fortescue de laudibus Anglorum, &c.*

As in ancient time, the Senatours of *Rome*, never elected a *Censor*; and as with us in conserving of Nobility, respect is had unto the Revenues, by which their dignity and Nobility may bee supported and maintained, *Cookes* 7. part 33. *b.* so the wisedome of this Realme hath of ancient provided, that none shall passe upon Iuries for the trials of any matters reall or personall, or upon any criminall cause, but such as besides their moveables have lands of estate for life, at the least to a competent value, least for need and poverty, such Iurours might easily bee corrupted and suborned, *Fortescue* 56. *b.*

And in all cases and causes, the Law hath conceived a better opinion of those, that have lands and tenements, or otherwise are of worth in moveable goods, presuming that such will commit, or omit nothing, that any way may bee prejudiciall to their estimations, or which may endanger their estates, then hath Labourers, Artificers, Retaylers, or such

like, of whom Tully saith, *Nihil proficiunt in se admodum mentiuntur*; and by divers Statutes, certaine immunities are given to men of quality, which are deemed to the vulgar sort of people, read hereof amongst other in *An.* 1. *Iac. cap.* 127.

By the Statute of 2. *H.* 4. *cap.* 21. amongst other things, it is enacted that no Yeoman should take, or weare any livery of any Lord upon paine of imprisonment, and to make fine and ransome at the Kings will.

FINIS.